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- (b) CAB Order No. 4437, January 26, 1946 .... A-3307
- (c) CAB Order No. E-922, October 29, 1947 .... A-3309
- (d) CAB Opinion and Order No. E-1735, June 30, 1948 (officially reported at 9 C.A.B. 381) [not a part of the Record herein] .... A-3311
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- (f) CAB Opinion and Order No. E-16195, December 29, 1960 (officially reported at 32 C.A.B. 1363) .... A-3403

**Excerpts From Transcript of Deposition of  
Charles C. Tillinghast**

[Docs. 54, 210-211, 216, 221]

**【604】 By Mr. Davis:**

Q. Mr. Tillinghast, let me try to establish a few independent facts, and I would appreciate it if you could answer my questions without feeling the necessity at this time of explaining the reasons for whatever decision may have been made.

I can assure you that you will have a full opportunity to explain anything that was done or was not done.

Isn't it a fact, in accordance with your understanding, that the Tool Company, as a result of the 1960 financing, held a hundred million dollar note of TWA?

A. It is.

Q. And that in connection with that 1960 financing TWA had obligated itself to make an offering to all of its stockholders not later than May 31, 1961 of either a hundred million dollars of debentures or \$111 million of debentures, approximately?

A. Yes.

Q. Is it also a fact, in accordance with your understanding, that the Tool Company had obligated itself to subscribe to 78 per cent of such an offering, and to also subscribe to whatever portion the 22 per cent of the 【605】 stockholders failed to subscribe?

A. Up to a ceiling of \$100 million.

Q. Up to a ceiling of \$100 million?

A. That's correct.

Q. And that the Tool Company could acquire those new TWA debentures by surrendering all or part of its \$100 million note in payment?

*Tillinghast—Deposition*

A. That is correct.

Q. Is it also a fact that in May 1961 the Tool Company asked TWA to consider a delay in the effective date of a TWA registration statement covering these debentures to be issued?

A. That is correct.

Q. Isn't it also a fact that the board of directors of TWA in fact refused to grant that request for a delay?

A. Yes.

Q. Isn't it also a fact that at that time the financial advisers of TWA, namely, Dillon, Read and others associated with them, advised TWA that it would be unadvisable to grant the request of the Tool Company for an extension of time?

A. It is.

Q. Isn't it also a fact that those financial ad- [606] visers made that recommendation on the ground that such a delay might have an adverse effect on the Boeing financing then contemplated?

A. That is correct.

Q. My understanding is that your conversations with Mr. McCone with respect to what you have testified to this morning took place after that action of the board meeting.

A. Yes.

Q. Isn't it a fact, then, that at the time you were discussing these matters with Mr. McCone the question or the issue as to what might or might not interfere with the Boeing financing was uppermost in your mind?

A. That was certainly one of the things that was uppermost in my mind when I was talking with Mr. McCone, yes.

Q. Now I am going to ask you if your recollection has been refreshed as to whether or not in your conversations with Mr. McCone, when you were discussing the desirability

*Tillinghast—Deposition*

or lack of desirability to "bail out the Hughes Tool Company," or whatever, the Boeing financing was very much on your mind?

A. Oh, yes, quite.

Q. Isn't that one of the reasons you gave to Mr. [607] McCone as to why it seemed to you that it would be undesirable to consider the 990 program?

A. I think it probably was, Mr. Davis, yes.

Q. And that it was discussed in the course of these communications relating to the decision that should be made?

A. Yes.

Q. Had you occasion to discuss with any of the lending institutions involved, or their representatives, what would adversely affect their financing commitment or arrangements?

A. At what time, Mr. Davis?

Q. I am still referring to that same period of time of from May 15th, if you please, to June 10th, but before the receipt of the three proposals reflected by Defendants' Exhibit 10. Let's make it June 8th, if you please.

A. Except to the extent that I may have discussed the matter with Mr. Sessel, the answer is no, I did not discuss it with the financing institutions.

Q. Isn't it also true that during that period you discussed with Mr. Breech the things which in your judgment or in his judgment might adversely affect this Boeing financing?

[608] A. I am sure I did.

Q. Did either Mr. McCone or Mr. Breech suggest to you that it would be desirable to investigate by communicating with the principal officers of the major participants in this lending institution group the question as to whether or not it would or would not adversely affect the Boeing financing?

A. Again making an exception in the case of Mr. Sessel, the answer is no.

*Tillinghast—Deposition*

Q. You understand my question was not what you did, but whether either Mr. McCone or Mr. Breech suggested your doing something or investigating?

A. My answer is that I don't think that they did suggest that.

Q. Did I understand your prior answer, when you said with the exception of Mr. Sessel, to say that they suggested Mr. Sessel?

A. I don't think that they suggested that I talk with Mr. Sessel. As you know, Mr. Davis, Mr. Sessel is a member of the board of directors of TWA, and in his capacity as a director, I am sure that I discussed this matter with him at the board meeting on the 17th, if not perhaps before that. I am not sure at the moment. I am quite sure that Mr. Sessel expressed [609] the view that it would be a mistake, so far as the financial institutions were concerned, to get into a 990 negotiation with Hughes Tool Company.

Q. Before we come to your conference with Mr. Sessel, I am interested in pursuing what took place between you and Mr. McCone or you and Mr. Breech, and my question to you is are you quite certain that neither of them suggested that you discuss the matter directly with a representative of the lending institutions?

A. I am quite sure that they made no suggestion. If they did, I have absolutely no recollection of it at the moment.

Q. I understand that Mr. McCone also, in the course of those conversations, suggested the possibility of reducing the Boeing order in part?

A. Yes.

Q. At the time that he made that suggestion, did you say to him, "But if we do that, that will change the amount of the financing arrangements that we have made with the lending institutions"?

*Tillinghast—Deposition*

A. No, I am sure I didn't say that.

Q. What did you say?

A. As I recall it, Mr. Davis, what I told him was that I thought that it would be uneconomical to try to [610] have, for example, half Boeings and half Convairs, that the operating—well, the operating lack of economy of relatively small fleets was very great, that from a standpoint of flexibility we would be far better off to have a homogenous fleet, and that quite apart from the problem of getting into possible endless negotiations with respect to the 990, and leaving the whole program in suspense, that I did not think it made sense, from an operating standpoint, to try to mix the two.

Q. You consider a fleet of 13 jets a very small fleet?

A. I don't know that I would say very small, but it is too small, in our opinion, to be effective from an operating standpoint.

Q. At that time, and I am referring to the time when you were having these conversations with Mr. McCone, you had already made studies investigating the operational advantages or disadvantages of 990s vs. Boeings or a combination of the two?

A. Oh, yes. Prior to the time that I came with TWA Mr. Rummel's department had made a very extensive investigation of this subject, and had come up with a recommendation with which you are familiar, and from the time that this question was first raised by you, I [611] had a number of discussions, repeated discussions, with Mr. Rummel on the subject, asking him to review the question and let me know whether anything that had happened changed, in any regard, his opinion.

Q. You are now referring to conversations you had with Mr. Rummel after you commenced to hear from me. I understand we are talking after May 26th, but I am still

*Tillinghast—Deposition*

referring to the period when you were discussing this matter with Mr. McCone, namely, from the time you received the May 26th letter and June 8th.

Are you addressing yourself to that period of time in your answer?

A. Yes. I had repeated discussions with Mr. Rummel about this.

Q. You discussed with Mr. Rummel, during that period of time, his views as to the possibility of a mixed fleet; is that correct?

A. Well, I can't say definitely, Mr. Davis, that I discussed that specifically between the 26th of May and the 10th of June. But in this general period I discussed it with him several times, and was quite familiar with his views on the subject.

Q. I understand that, Mr. Tillinghast. I am trying to ascertain what was the basis for the statements or [612] contentions that you were making in your conversation with Mr. McCone.

A. Well, at the time that I talked with Mr. McCone and made this statement I was quite familiar already with Mr. Rummel's views on this particular subject.

Q. They had been discussed, then, before May 26th?

A. Oh, yes.

Q. Was it before or after that Mr. Breech suggested to you that you should not involve yourself personally in this equipment problem?

A. That was some time prior to my visit to Seattle on the 25th and 26th of May.

Q. Let me understand. You went to Seattle the 25th or 26th of May?

A. I went in the afternoon of the 25th, and was there that evening and on the 26th.

*Tillinghast—Deposition*

Q. In connection with your visit to Seattle Mr. Breech had occasion to comment that he did not think it was desirable for you to become personally involved in the equipment selection; isn't that correct?

A. That is correct.

Q. Am I to understand, then, that between May 25th or 26th and June 8th you nevertheless pursued this question with Mr. Rummel so as to put you in a position to [613] make the remarks and comments you made to Mr. McCone?

A. That is not correct, Mr. Davis. I had been pursuing this question with Mr. Rummel since the 30th of March.

Q. What question had you been pursuing with Mr. Rummel since the 30th of March?

A. The equipment question generally, and what equipment TWA should select.

Q. In those discussions with Mr. Rummel you also discussed the 990s?

A. Yes. Mr. Rummel's study discussed 990s and several other different types of ships.

[614] Q. Was that on the basis that TWA was possibly interested in 990s, or expected to order some, or what was the nature of your conversation that you had from March 30th on with Mr. Rummel as to the 990s in relationship to the equipment program of TWA?

A. Well, Mr. Davis, your question is a little diffuse, but let me start.

I first talked with Mr. Rummel, I believe, on the 30th of March, at which time I think he gave me, although I may have had it a couple of days before that, his study on the 1961 equipment program, and from that time in March up to the time that you are speaking about I had a number of conversations with Mr. Rummel, as well as others, about this problem, because it obviously was a very major ques-

*Tillinghast—Deposition*

tion, and one that was going to come to a head very, very quickly.

Mr. Rummel's study, covered a number of different ships of the general sort in which TWA might be interested, and among others. This study covered 880s, 880Ms, and 990s. Whether or not the study itself mentions that Hughes Tool Company had some 990s on order, or whether Mr. Rummel told me that orally, I cannot at this moment recall. But early in the game I knew that one of the alternatives [615] that was under consideration was the 990. As a consequence, again early in the game, I had discussed with Mr. Rummel the pros and cons of the 990, and in particular the pros and cons of the thirteen 990s which were under order by Hughes Tool Company.

Does that answer your question?

Q. In part.

I believe you decided to become chief executive on March 20th?

A. That's correct.

Q. One of the things you immediately began to instruct yourself about, to obtain information, on becoming chief executive officer was this equipment program of TWA?

A. That was one of the things.

Q. You had a great many other things to do?

A. I did, an exceedingly great number of things to do.

Q. You reviewed with Mr. Rummel the studies he had made previous to your becoming a chief executive officer?

A. That's correct.

Q. You weren't reviewing with him studies which he had undertaken pursuant to your request?

[616] A. No. This had all been begun before I joined the company, or before I agreed to join the company.

Q. This was a discussion you had with Mr. Rummel based upon some written reports that Mr. Rummel had got-

*Tillinghast—Deposition*

ten up, or programs, or presentations?

A. This is a specific study, Mr. Davis, with which I think you happen to be familiar.

Q. I don't happen to be familiar with it, but whether I am or not, for the record, will you please answer my question.

A. It is a specific study, entitled, as I recall it, "1961 Equipment Program."

Q. Can you tell us about how much time you spent with Mr. Rummel studying this program?

A. When?

Q. At the time that you first began to discuss this matter with Mr. Rummel, and up to the period we are talking about, which is either May 26th or June 8th?

A. Well, in the aggregate, by June 8th I had probably, oh, spent an aggregate of, I would guess, 10 or 15 hours discussing the thing with Mr. Rummel, and I had spent considerable additional time reading the report and studying the report.

【617】 Q. When was the decision made that the Boeing aircraft was the best suited or more desirable from TWA's point of view?

A. The decision made by whom?

Q. TWA.

A. Well, if you mean when was the decision made by the board of directors, the decision was made by the board of directors at their meeting in Kansas City on, I believe, the 27th of April.

Q. No, I am not referring to a decision by the board of directors. I mean the decision or the recommendation which resulted in a recommendation to the board for action. I am referring to the conclusion. When was the conclusion reached, so far as you were concerned?

A. So far as I was concerned?

*Tillinghast—Deposition*

Q. Yes.

A. Shortly before the meeting of the 27th.

Q. Of which month?

A. April.

Q. During this period between March 30th and April 27th you considered the possibility of 990s as well as Boeings, is that correct?

A. That's correct.

【618】 Q. Did you also consider, during that period, the possibility of a mixed fleet?

A. There was some talk of it, yes.

Q. What do you mean by "some talk"? Can you identify the talk, and with whom?

A. I can't identify it specifically, Mr. Davis. I imagine I must have talked with Mr. Rummel. I am sure that it was discussed with him. On the 17th—

Q. Which month?

A. (Continuing) —of April, the first day that I took office, as I recall it, the afternoon was devoted to an equipment meeting which included Mr. Rummel, Mr. Cocke, Mr. Rourke, Mr. Fellows. I can't remember for certain—no, it didn't include Mr. Hall. I think it may have included Mr. Dunn. I am not positive.

Q. Let me ask you this: Did Mr. Rummel have occasion to review or revise this original report that he had and which you discussed with him shortly after you became chief executive officer?

A. Not that I can recall. Certainly not to any significant extent.

Q. So far as you were concerned, then, the recommendation which was made to the board, which was 【619】 decided upon on or about April 17th—

A. April 27th.

*Tillinghast—Deposition*

Q. That was board action?

A. Board action.

Q. I understand that the conclusion as to the recommendation to be made was made on or about the 17th, or shortly before the 17th.

Mr. Sonnett: What he testified to was shortly before the 27th.

Mr. Davis: I understand that. Then he found that was based upon some meeting that was held on the 17th.

Q. What are the facts, anyway, Mr. Tillinghast?

A. The facts are these, Mr. Davis, if that is what you want: The recommendation by the TWA operating people had already been reached before I came with the company. Obviously this was a matter of such great significance and importance that I wanted to review this recommendation, this conclusion that had already been reached, so prior to coming with the company I talked with Mr. Rummel, I read the equipment proposal, and the first day that I was there I had a meeting in the afternoon for the purpose of having a broader discussion of this to see myself as to whether I was [620] prepared to adopt this program and recommend it to the board at its meeting ten days later.

Q. If I understand your testimony, the operating people had already made up their own mind and made a recommendation before you became chief executive officer?

A. That's correct.

Q. Then you felt that you as chief executive officer ought to review it?

A. That's correct.

Q. As a result of the review that you made of it you subsequently recommended it to the board on April 27th?

A. Yes.

*Tillinghast—Deposition*

Q. What you recommended to the board on April 27th was, in substance, the recommendation of this operating personnel group, is that correct?

A. Yes.

Q. So what was recommended to the board on April 27th was, in effect, the conclusion reached by the operating people of TWA before you became chief executive?

A. That's correct.

Q. Do you know whether or not that was a program [621] or conclusion that was prepared by the operating people at TWA at the direction—at whose direction was that program or study made prior to your becoming chief executive officer, do you know?

A. Well, I can't be altogether positive about that. I believe that Mr. Rummel's department generated the study on its own, and that that study was brought by Mr. Rummel's department to a point where some action was required, and at a meeting of the board prior to the time that I took office there had been an equipment committee appointed specifically to deal with this problem.

Q. May I interrupt you by asking you to identify this equipment committee, because up to this point I was thinking everything was being done by this operating committee or operating personnel under Rummel.

A. Well, I can't remember—I can refresh my recollection, but at the moment the only people I can be sure of on that committee were Mr. Leslie, Mr. Cocke—

Q. All operating people?

A. Mr. Pierson, I believe, and I believe there were one or two others, but I can't remember for sure at the moment. [622]

Q. All operating personnel, in a broad sense?

A. I wouldn't guarantee that.

Q. Mr. Sessel?

*Tillinghast—Deposition*

A. There may have been an outside director on the committee. I just can't recall at this point.

Q. Mr. Sessel, perhaps?

A. I doubt—

Q. Mr. Breech?

A. No, I am sure Mr. Breech wasn't on that committee.

Q. When you were reviewing these recommendations did anyone of any importance or significance, or whose views would be material—

A. My recollection is that it consisted mainly of the inside directors.

Q. Inside directors or inside employees?

A. Inside directors; Mr. Leslie, Mr. Cocke, Mr. Hall. But there may have been one or two outside directors on it. I would have to refresh my recollection to be sure, Mr. Davis.

Q. So this was an equipment program which had been generated by this personnel at TWA at a time when TWA was without a voting trust—is that your understanding of the facts?

【623】 A. No. I think it started before there was a voting trust, and ended after there was a voting trust, because the study itself was dated in March. I think maybe March 10th was the date of the study, and it is obviously the sort of study that had taken quite a time to prepare, and I believe, although I can't state positively, that it was commenced sometime in the latter part of 1960, and reached fruition in the early part of 1961.

Q. But so far as you know, the new management group or the new people in control of TWA had not impinged upon the study, they hadn't influenced it in any way, had they?

A. The new management people, you say?

【624】 Q. Yes, the new persons who had acquired control of TWA.

*Tillinghast—Deposition*

A. Well, there weren't any new people in management, Mr. Davis, until I came in.

Q. What I am trying to say, Mr. Tillinghast, is the people who acquired control of TWA as a result of the voting trust did not exercise any influence or direction which is reflected by this study or report?

A. To my knowledge, Mr. Davis, neither the voting trustees nor the new directors stimulated, generated or directed the preparation of this study.

Q. You, some time shortly after March 30th, discussed this report with Mr. Rummel?

A. The first time was on March 30th, I believe.

Q. At that time the report was fairly well completed, but you wanted to review it before submitting it to the board; is that correct?

A. At that time the report was completed.

Q. That report contained an evaluation of the 990s?

A. It did.

Q. Did it also contain a comparison between the 990 and what Boeing had to offer?

A. It did.

Q. Am I to understand that it concluded that [625] the Boeing was more desirable?

A. It did.

Q. You had occasion of discussing with Mr. Rummel the nature and extent to which 990s might be available to TWA if the decision in fact was to take 990s?

A. Yes.

Q. Can you describe to me a little what was said at that time between you and Mr. Rummel or with respect to the availability or lack of availability or probable availability of the 990s?

A. What I was told, Mr. Davis, and I can't tie this to a specific discussion, but what I was told was that Hughes

*Tillinghast—Deposition*

Tool Company had some 990s on order, that they possibly would be available, that whether or not they would be available, and if so on what terms, wasn't definitely known.

However, Hughes Tool had some delivery positions which would be attractive if one were going to acquire 990s.

The 990s were in American Airlines' cockpit configuration, and if the 990s were purchased there would be a problem of delay in delivery and a problem of expense in converting the America cockpit—American [626] Airlines' cockpit configuration to a TWA cockpit configuration, and in that connection Mr. Rummel said that he had several times tried to discuss this question with Mr. Hughes because it seemed clear to him that if these planes were intended for TWA, and if TWA were going to take them over, it was important, had been important for a long time, that they be constructed with TWA cockpits and TWA systems rather than with American Airlines' cockpits and systems, but that he had never been able to discuss the matter with Mr. Hughes, and he understood, he had been told by Convair, that Mr. Hughes had given directions that Convair were not to discuss the 990s with him or any of the TWA people.

Q. Is that the full extent of your recollection as to what you discussed with Mr. Rummel relating to the 990s?

A. No, not relating to the 990s. We discussed far more than this relating to the 990s, but I thought your question was directed to the availability of the 990s.

Q. That is what I had in mind.

A. Well, as to the availability of the 990s, this is the substance of—well, I need to add one other [627] thing, that Mr. Rummel expressed the hope that we would not get into a 990 negotiation because he felt that if we did it would be typically long, involved and drawn out, and he felt very deeply that TWA needed planes just as quickly as it could get them, and he was afraid that the whole equipment pro-

*Tillinghast—Deposition*

gram would be delayed if we got into extensive negotiations on the 990s.

Q. Did he indicate at that time that for the terms and conditions under which the planes were available they would be or could be advantageously used by TWA, assuming that the terms and conditions were not a problem?

A. Mr. Rummel's view throughout was that if we were going to get any planes they ought to be Boeings, and that if we were going to get more planes we ought to get more Boeings so as to have a more homogeneous fleet.

Q. In other words, it was Mr. Rummel's position that it was undesirable from TWA's point of view to consider 990s, irrespective of any question of terms or conditions or delivery schedules?

A. Not entirely, Mr. Davis. I am sure that Mr. Rummel believed, felt—I had this discussion with him [628] at a later time—that there obviously were terms good enough that TWA should be interested in 990s, but they would have involved, as I recall the figure, knocking a million dollars or more off what he assumed computed would be the probable price.

Q. You say you had a discussion with Mr. Rummel at a later time.

Are you still referring to the period from March 30th to April 27th?

A. No, I am not. I am referring to a period in July.

Q. After this litigation started?

A. That's right.

Q. I am interested now in what took place during the period we are talking about.

A. Yes.

Q. Did you have any further conferences or discussions with Mr. Rummel between March 30th and April 17th that is of any consequence, relating to this subject?

*Tillinghast—Deposition*

A. Yes.

Q. May I call to your attention that your calendar appears to refer to a date on April 21st with Mr. Rummel, but that is the only one, I believe, [629] that we have been able to find.

A. Well, I have the feeling, Mr. Davis, and I may be wrong here, that I had two meetings with Mr. Rummel before I took office.

Q. Before you took office?

A. That's right. I know that I had a meeting with Mr. Rummel and Mr. Fellows, and that may have been this meeting on the 30th or it may have been a meeting the following week that we agreed upon when we met on this date.

I know that when I had the meeting with Mr. Rummel and Mr. Fellows that Mr. Fellows was there to discuss the traffic problem, and at the meeting of which I am speaking, at which Mr. Fellows was present, I had already made a quick review of this document, the equipment program I spoke about, and I was—wanted to have Mr. Fellows there because I understood that he was the man who could best answer the question of if we have all these planes, can we fill them sufficiently with passengers so that we will earn revenue with them, and I wouldn't be positive, but I have the feeling that I had one preliminary meeting with Mr. Rummel and then a meeting with Mr. Rummel and Mr. Fellows before the 17th of April.

[630] Q. Do you recall anything that was said by you or by Mr. Rummel at the subsequent meetings which relate to the availability of the 990s, the desirability of the 990s?

A. Well, I haven't discussed yet the desirability of the 990s.

I have told you, Mr. Davis, about all that I can recall about the availability of the 990s. I haven't testified about the desirability of the 990s.

*Tillinghast—Deposition*

Q. Did you discuss the desirability? For the purpose of shortening the record, I am not interested, on the desirability, any more than the report shows, by Mr. Rummel, unless you discussed whether or not there should be a change in the report.

Did you discuss any possible change in his report as to desirability of the 990s?

A. No. As a matter of fact, intensive discussions as to the desirability of the 990s didn't arise until some time after the 17th of May, when the controversy with Hughes Tool Company arose.

Q. There had been little or no discussion as to the desirability of the 990s prior to that time?

A. There had been some discussion, but it wasn't intensive discussion.

【631】 As I recall it, Mr. Rummel discussed with me why it was that he preferred the Boeing 707 to any of the other ships, and we briefly discussed each of the other ships and its virtues and shortcomings, and why it was that he felt that on balance the 707 was the desirable ship for TWA to buy.

Q. Can you, as briefly as you can, summarize the recommendation that was made to the board of directors on April 27th?

A. Well, the recommendation was that TWA proceed with a program for the purchase of 26 Boeing aircraft, consisting of 20 707-131s and six 707-331s.

Q. Excuse me for interrupting, but to identify, the six Boeing 707-331s are a long-range aircraft primarily used in the international segment?

A. That's the intercontinental version.

Q. The 20 707-131s could be best described as short-range or medium-range jets?

*Tillinghast—Deposition*

A. Long-range, but not as long as the 331.

Q. Was that the competitor, so to speak, of the 990?

A. I believe that has greater range than the 990.

Q. The 990, in fact, is a shorter range than the 131.

【632】 A. It is a little shorter than the 131.

The 131B, and these were both fan engine, the 131B is capable of trans-Atlantic utilization, whereas I do not believe that is true of the 990.

Q. For the purpose of following your testimony, the discussion you had with Mr. Rummel of the 990s versus the Boeing is really a comparison of the 131s of Boeing versus the Convair 990!

A. That's correct. The 990 isn't comparable at all with the 331B. It is broadly comparable with the 131B.

Q. I believe I interrupted you when you were going to summarize the recommendation that was made to the board when you said it was basically to take 20 131Bs and six 331s.

A. Well, that is all I intended to say. That was the recommendation.

Q. Between April 27th and your conversation with Mr. McCone had you had any occasion or opportunity to discuss the matter any further with either Mr. Rummel or Mr. Leslie or Mr. Cocke, and I am now referring to the subject of the desirability or lack of desirability of the 990s, or the nature or extent of the obligation of TWA to the Tool Company.

【633】 A. Yes. As a matter of fact, during the period from the 17th of May through the period you have—

Q. June 8th?

A. June 10th.

Q. Prior to the June 10th letter, prior to the date of the June 10th letter, I am saying.

*Tillinghast—Deposition*

A. Between May 17th and June 10th this subject was a subject of very frequent discussion, and including an afternoon session, Mr. Davis, when you sat with us and stated at considerable length the reasons that you felt or reasons that you felt we should take into account.

Q. Can you identify the date of that meeting?

A. I believe that was the 2nd of June.

Do you confirm that that is right? It is not on my calendar here.

Q. I don't have my calendar with me, but I am willing to accept that. It is, I am told.

My question is was this conversation or series of conversations with Mr. McCone before or after June 2nd.

A. I can't distinctly recall these in relation to June 2nd. I would—my best recollection, Mr. Davis, would be that I had one before June 2nd and another [633A] after June 2nd, because I recall having told Mr. McCone that we either were having or had had a discussion of the specific matter with you.

[634] Q. Were these calls calls that were originated by Mr. McCone to you or from you to Mr. McCone?

A. Most of them originated from Mr. McCone to me.

Q. But during this period in which these conversations took place there were some calls from you to Mr. McCone?

A. Well, I think in every instance it was a case where Mr. McCone had called and I called him back.

Q. Where was Mr. McCone, where did he live or where was his business?

A. Well, his home was in California, his business was in California, but he was in New York a good deal.

Q. These conversations that you have previously described this morning, these were long distance telephone calls, weren't they?

*Tillinghast—Deposition*

A. At least one of them was. I may have had a telephone conversation with him when he was up at the Waldorf in New York. He made it a habit almost whenever he was in New York to call me up.

Q. This long distance call or calls that you had with Mr. McCone, which were originated by him, as you recall, but probably leaving word that he called, and you called him back—

A. Yes.

Q. (Continuing) —where would he be calling from in [635] California?

A. I can't tell you specifically, Mr. Davis, I would know only that I would receive a slip saying Mr. McCone called, call operator so and so, and my secretary would get him on the phone.

Q. You personally do not know where or how you would go about reaching Mr. McCone by phone without your secretary's assistance?

A. Well, I think I could find—well, I think I could find him without her assistance, but she took care of the problem.

Q. But you don't know where you would be reaching Mr. McCone in connection with these telephone conversations we are talking about, is that your testimony?

A. Well, I don't know specifically. I presume it was at the Joshua Hendy Company.

Q. Where, sir?

A. In Los Angeles.

Q. That is what I was trying to elicit from you.

I understood your testimony this morning to be that in the course of that telephone conversation you took some positive positions with Mr. McCone in connection with what he was urging you to consider or reconsider?

*Tillinghast—Deposition*

A. I expressed an opinion, yes.

【636】 Q. That was based upon what you have described as to what had taken place as to your study of the equipment program that you have just testified about?

A. Well, it was based upon my appraisal of the whole situation.

Q. But specifically, it was based upon your study of the equipment program as programmed by Mr. Rummel and this equipment committee, et cetera, that you just testified about?

A. It included that.

Q. I would like you to describe, if you please, what, if anything, you did following this conversation with Mr. McCone to confirm your conclusions, if you did.

A. You mean to reconfirm—

Q. I may have misunderstood your testimony, the record will show what it was, but I understood it to be as to what you said and what Mr. McCone said with respect to this 990 program, and the desirability of considering bailing out the Tool Company.

A. Mr. Davis, this was the subject of very, very frequent discussion in the office. I was discussing it very frequently with Mr. Rummel and Mr. Leslie and Mr. Cocke, and I can't recall that as a consequence of this discussion with Mr. McCone I did anything specific.

【637】 Q. Did you ever communicate with a representative of the Hughes Tool Company for the purpose of finding out to what extent the Tool Company was prepared to enter into a firm or more definitive commitment that would make 990s available to TWA, or the terms and conditions under which they would be made available?

A. Yes. I wrote you several times about that.

Q. You are referring to letters addressed to me?

*Tillinghast—Deposition*

A. I guess they were addressed to Mr. Holliday. I stand corrected. I believe they were addressed to Mr. Holliday.

Q. Can you identify those letters more specifically, Mr. Tillinghast?

A. If I had before me the correspondence covering the period from the 17th of April up to the middle of June I am quite sure I could. Also, if I recall correctly, Mr. Davis, at the meeting on the 2nd of June at which you were present I asked that if you wished seriously to pursue this you let us have some very definite terms just as promptly as possible.

Q. Will you produce at our next session your copies of letters to either Mr. Holliday or me or anyone whom you thought was a representative of the Tool Company during this period that you refer to which you have identified [638] or described as inquiries as to the availability or terms of the 990s?

Mr. Sonnett: You will have those, Mr. Davis. It would facilitate it if you produced the originals, and the witness can identify—

Mr. Davis: Mr. Sonnett, I cannot identify the letters from the witness' testimony. I do not know what letters he thinks constitute that kind of request. Quite frankly, I believe that I am fairly familiar with that correspondence. I must say I have never thought about it in quite this connection. We have been furnished with a great mass of material, to be sure. It would be very burdensome for us to try to identify what Mr. Tillinghast is talking about. I think that we will move more rapidly, since Mr. Tillinghast knows what he is talking about, he knows the letters he has in mind.

I am sure that we left the originals of those documents in Mr. Tillinghast's or TWA's possession, and I am sure

*Tillinghast—Deposition*

it will be no difficulty whatever, if Mr. Tillinghast is willing, pursuant to your advice, to identify or produce what he has in mind. I am perfectly willing to take in place of a physical production a sufficient identification of the letters [639] so we may find them among the documents supplied to us.

Mr. Sonnett: May I ask the witness a question? Maybe we can facilitate this.

We are dealing with letters written by you to Holliday during what period of time?

Mr. Davis: The record shows that.

Mr. Sonnett: I am sorry. I am just asking the question because I don't have in mind at the moment what the record shows.

The Witness: The period May 17th to, oh, the middle of June.

Mr. Sonnett: Isn't it perfectly simple to get out of your files the letters written by Mr. Tillinghast to Mr. Holliday during that period of time?

Mr. Davis: No, it is not, sir, because Mr. Holliday receives letters in Houston, Texas, he sometimes receives letters addressed to him at the Waldorf, and I probably have copies of them, if he has been efficient, but I still will not know what letters it is Mr. Tillinghast is referring to.

The Witness: If you will produce copies—

Mr. Davis: Mr. Tillinghast, my position is on the record. My only question now is whether you will [640] or will not produce the letters that you have been referring to as constituting what you described, you claimed they constitute.

Mr. Sonnett: Mr. Davis, we will produce them. My only point is I thought you might have them at hand, and it would save time to go ahead with the documents which Mr. Holliday received and which you presumably have.

*Tillinghast—Deposition*

Mr. Davis: If Mr. Tillinghast is prepared to identify the letters more specifically, we may be able to find them.

Mr. Sonnett: How many letters are we talking about?

The Witness: Oh, I would say, both ways, a dozen or 15 letters, somewhere in that vicinity.

Mr. Davis: May we take a luncheon recess now?

The Witness: I am probably thinking of a few telegrams in between.

Mr. Davis: I would prefer, in this area, Mr. Sonnett, to have the witness satisfied that he is referring to all of such documents, and I do not want to assume the burden of presenting Mr. Tillinghast with what he subsequently may feel is less than a complete reference to him as to the documents he has [641] in mind which supports the testimony he just gave.

Mr. Sonnett: You will have them after the luncheon recess.

Mr. Davis: When would you like to return after lunch? It is now a quarter of 1:00, ten of 1:00.

The Witness: 2:00 o'clock.

Mr. Sonnett: While we are on the scheduling, I still have Rummel and Cocke sitting by.

Mr. Davis: I am sure, as I told you before, Mr. Sonnett, you don't need to keep either of those gentlemen on tap. I will give you full, adequate notice, I believe, as to when we will be finished with Mr. Tillinghast, and when the next person may be expected—

Mr. Sonnett: All right. I want to know if you are now able to tell me when you are going to finish with Mr. Tillinghast.

Mr. Davis: I do not know at this point when I am going to be finished with Mr. Tillinghast, and as soon as I have any indication as to when I may be through, I will so advise you.

*Tillinghast—Deposition*

Mr. Sonnett: How far in advance do you propose to advise me?

Mr. Davis: As much as I can. How much time [642] would you like to have?

Mr. Sonnett: I would like several days' notice—

Mr. Davis: I will undertake to give you several days' notice before you have to produce the next individual.

Mr. Sonnett: On that assumption, you will need Mr. Tillinghast for tomorrow and Friday.

Mr. Davis: There is no point to making any assumptions like that.

We are now adjourning for lunch.

Mr. Sonnett: You are not telling me whether you want this witness tomorrow morning or not?

Mr. Davis: I will tell you that at 2:00 o'clock this afternoon. The fact of the matter is I am waiting for a communication—

Mr. Sonnett: If you can tell me at 2:00 o'clock, that is fine.

Mr. Davis: I will tell you when I know, and not before.

Mr. Sonnett: The witness will be here.

(Whereupon, at 12:45 p.m. a luncheon recess was taken.)

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[643] AFTERNOON SESSION

2:05 p.m.

CHARLES C. TILLINGHAST, resumed the stand and testified further as follows:

Mr. Sonnett: Are you ready, Mr. Davis?

Mr. Davis: Yes.

*Tillinghast—Deposition*

Mr. Sonnett: During the luncheon recess I obtained and now produce two files containing letters from Chester C. Davis at 120 Broadway and Raymond Holliday and others to and from Mr. Tillinghast and TWA, which you asked us to assemble and produce.

I have them here and now produce them.

I assume you want to mark them.

Mr. Davis: No. I wish you would hand them to the witness, Mr. Sonnett, if you please.

Mr. Sonnett: I think you ought to mark them before I hand them to the witness, just to identify them.

Would you like to mark them plaintiff's exhibits?

Mr. Davis: No, I am not prepared to mark them as exhibits, Mr. Sonnett.

【644】 Mr. Sonnett: I won't show anything to the witness that is not identified on the record by a number.

Mr. Davis: I assure you that I will identify anything which the witness has identified.

The question, Mr. Sonnett, on the record, is, I believe, that I wanted this witness to identify the correspondence which he claimed in his testimony to constitute an effort on his part to determine from the Hughes Tool Company or any of its representatives on what terms and conditions 990s would be available to TWA, and I am not interested at this time in identifying a mass or a file of correspondence.

The question is, I believe, simple enough, and it is merely for Mr. Tillinghast, with the material which is now available to him, to identify, and then I will mark for identification for this record, all letters, telegrams, or other communications, which this witness claims constitute the support for his statement on the record that he made an effort to determine from the Hughes Tool Company or any of its

*Tillinghast—Deposition*

representatives or from anyone whom he thought was a representative of the [645] Hughes Tool Company, the terms and conditions under which 990 aircraft would be available to TWA.

Mr. Sonnett: Mr. Davis, let me suggest to you the following:

I know you are anxious, as usual, to continue to argue with the witness, but the subject matter of your request was for correspondence to TWA from yourself or Mr. Holliday or others which the witness thought related to interference with—

Mr. Davis: You are referring to a different request, Mr. Sonnett. I am referring to the request I made this morning, and the request I made was wholly unrelated to the request I made for the witness to identify the correspondence which he claimed constituted malicious or wilful interference with the affairs of TWA.

Which request are you now referring to?

Mr. Sonnett: Let me simplify your problem. I thought I was meeting your request. These, after all, are communications written by you, Mr. Davis, or your client, Mr. Holliday, or others of Hughes Tool. You should be very familiar with it.

I thought I was being cooperative in offering you the file of correspondence in this area which [646] you requested. We went to considerable length to get it at this late date for you.

As to the claims of TWA, the claims of TWA are that every document you wrote, Mr. Holliday wrote, was written in furtherance of the conspiracy charged in the complaint.

If you would like to debate the evidentiary weight of every one with me, we will debate it, but I don't propose to have you engage in an argument with the witness about it.

*Tillinghast—Deposition*

I am producing the documents. Do you want them or don't you?

Mr. Davis: You leave them right where they are.

Mr. Sonnett: You mark these as being produced now and available for inspection as Plaintiff's Exhibits 1 and 2, and then you can do what you like with them.

Mr. Davis: Will you use A and B instead of confusing them with 1 and 2?

Mr. Sonnett: They are plaintiff's exhibits, so I don't think there will be much confusion. We went to a lot of trouble to get these for you, and now you are standoffish about looking at them, [647] even though it is principally communications from you and Mr. Holliday.

Mr. Davis: Of course, Mr. Sonnett, I am not going to take the time to correct every misstatement you make—

Mr. Sonnett: You will never have an opportunity, because I don't make them.

Mr. Davis: I told you ten times that Mr. Holliday is not my client, and you persist in saying that. It is rather typical of your understanding of the facts.

Mr. Sonnett: You represent Hughes Tool Company, don't you?

Mr. Davis: That's right. Your statement a moment ago was I represent Mr. Holliday, and I do not believe that you are not capable of remembering something—

Mr. Sonnett: Is Mr. Holliday an officer of Hughes Tool Company?

Mr. Davis: Mr. Holliday is an officer of Hughes Tool Company. You said this morning you do not represent Mr. Breech. Do you represent every officer and stockholder of TWA?

Mr. Sonnett: I represent each of them, and [648] in that capacity, Mr. Howard Hughes.

*Tillinghast—Deposition*

Mr. Davis: In that capacity, you are using your best efforts for the Hughes Tool Company?

Mr. Sonnett: Certainly.

Mr. Davis: When the time comes, we will have to find out who you were trying to represent—

Mr. Sonnett: All of the stockholders of the company.  
Mr. Davis.

Mr. Davis: Will you mark those two files as Plaintiff's Exhibits 1 and 2 as requested, and then I will proceed with my questioning of the witness.

(Group of documents marked Plaintiff's Exhibit 1 for identification, as of this date.)

(Group of documents marked Plaintiff's Exhibit 2 for identification, as of this date.)

Examination (Cont'd) by Mr. Davis:

Q. Mr. Tillinghast, you have before you two files of numerous documents which have been produced by your counsel, and I ask you to identify each communication which supported the statement of yours this morning to the effect that you wrote on numerous occasions to the [649] Hughes Tool Company, or representatives of the Tool Company, with respect to the terms and conditions or the availability of 990s to TWA.

A. Mr. Davis, without admitting the accuracy of your characterization of my former testimony, I leafed quickly through these papers this noon, and my recollection is refreshed that I first raised this question at our meeting on June 2nd, that on June 8, 1961, Mr. Rowe, at my request, wrote a letter drawing attention to the request I made on June 2nd—

Q. Excuse me for interrupting, Mr. Tillinghast, but so there will be no misunderstanding, I want you, with respect

*Tillinghast—Deposition*

to each document that is in response to my question, I want to have it marked as a defendants' exhibit.

If you please, as you go along, I would appreciate it if you would refer to the letter, have it marked, and then you may make any comment or explanation that you wish with respect to it. It would be helpful if at the same time you could refer to the portion or the portions of any lengthy letter which you characterized as constituting a request for information as to the terms, conditions and availability of the 990s.

Mr. Sonnett: As purely a mechanical [650] suggestion, to avoid further wasting of time, may I suggest that when the witness identifies the date of a letter, and from and to whom, that instead of stopping with the reporter to physically mark it, we deem it marked the next defendants' exhibit. We can physically do the marking at the close of the session.

Mr. Davis: Let us furnish the witness with some paper clips then, so we will not spend too much time in doing that.

Mr. Sonnett: Fine.

Q. Mr. Tillinghast, we will have no objection, if you can, to identifying the portions of a letter if the letter relates to several subjects, so that it will not be necessary for me thereafter to pick up each document and ask you to indicate the portion of the letter which constituted a request within the scope of my question.

A. Mr. Davis, I do not have with me the transcript of the discussion on the 2nd of June.

However, I do have a copy here of Mr. Rowe's letter of June 8, 1961, and in this regard I call your attention to the next to the last paragraph.

*Tillinghast—Deposition*

Q. Which reads how?

【651】 A. Well, it reads as it reads, Mr. Davis, but this particular—one particular part said, speaking of me: "What he clearly said was that if TWA is to consider the acquisition of Convair 990s it has to have a specific, definitive, written statement of the terms on which they would be available, including the question of whether or not Hughes Tool Company would be willing, in effect, to give us a delivery bond and pay us a penalty for every week of delay from the deliveries which you state."

Q. Will you hold that for a second so that we can save time, Mr. Tillinghast? This was a letter dated June 8th?

A. This is a letter dated June 8th.

Q. Written at your request?

A. Written at my request.

Q. Is that the first communication in answer to my question, or are you picking them up as you find them? Is it your recollection that was the first time such a request was made of Hughes Tool Company?

A. No. The first time, as I have said several times, Mr. Davis, was on June 2nd, at the meeting which we had in the board room of TWA, at which you were present.

【652】 Q. I have a transcript of that.

A. And of which you have a transcript.

Q. Referring to that comment, is that reference to a bond where you were requesting that the Hughes Tool Company give TWA a bond for the performance by General Dynamics as to delivery dates of the aircraft?

A. That's correct.

Q. The next communication?

A. The next communication is on June 16, 1961, and consists of a letter from me to Mr. Holliday. In the first paragraph 4 of the letter to which I have just referred it

*Tillinghast—Deposition*

is stated: "It should be noted, however, that you have not even yet advised us of the purchase price of the planes, an obviously essential term. You have also failed to advise us of the form in which Hughes Tool Company would want payment for the assignment of its rights under the purchase agreement, whether in cash or subordinated obligations, or otherwise. These are all facts that in addition to the relative advantages to TWA of the Convair 990s and other equipment must be taken into consideration in weighing your proposal."

Q. This was a letter addressed to Mr. Holliday, replying to the three proposals in the letter of June [652A] 10th, which is Defendants' Exhibit 10?

A. That's correct.

[653] Q. Anything else?

A. That is all that I have discovered so far, Mr. Davis.

Q. Do you have in mind the existence of any other communication?

A. No, I don't have in mind any other communication, Mr. Davis. Perhaps there was a later reference to the subject, but I rather doubt it, and that is as far as I had time to go through the file.

Q. Does that indicate to you that you would like to change your testimony of this morning?

A. No, it does not.

Q. You feel that this morning you fairly described your efforts to obtain information from the Tool Company in the manner that you did?

A. Yes. There were several requests for specific information, none of which, so far as I can recall, was satisfied.

Q. The requests for information you are referring to are those that you have adverted to, including the transcript of what occurred on June 2nd?

A. That's correct.

*Tillinghast—Deposition*

Q. And that is all that you have in mind?

A. That is all that I have in mind.

【654】 Mr. Davis, I have got to change that, because I believe, if I recall correctly, that Mr. Rowe had some oral conversations with you on the subject. I do recall that he was seeking a copy of the contract. He received a copy of the contract, and the price schedule was not attached to it.

I believe, as I say, that in addition to what I have referred to here, Mr. Rowe had either correspondence or conversations or both with you on the subject.

Q. You recall, then, that Mr. Rowe, in connection with this letter of his that you have referred to, also asked for a copy of the contract with General Dynamics relating to the 990s?

A. That's correct.

Q. And he received same?

A. He did, minus certain schedules.

Q. Was that request of Mr. Rowe made pursuant to your suggestion or request to him?

A. Yes. I asked him to get the material.

Q. Up to that point TWA had not sought or obtained to seek a copy of the contract with specifications referred to in that contract between General Dynamics and Hughes Tool Company?

【655】 A. Well, now, I can't answer that definitely. Whether somebody at some point had tried to get this information and failed, I don't know. The only thing I know for sure is that we didn't have it.

Q. Did you inquire of either Mr. Rummel or Mr. Leslie or Mr. Cocke if they had any information as to the price or how to go about determining the price of such aircraft?

A. I discussed that with Mr. Rummel on several occasions.

*Tillinghast—Deposition*

Q. I am referring to the time that you were seeking to obtain this detailed information from the Hughes Tool Company so as to be in a position to make a business decision.

A. I just can repeat that I discussed that with Mr. Rummel on several occasions.

Q. What did Mr. Rummel tell you?

A. Mr. Rummel told me that they had guessed at a price computed as best they could what ~~Hughes~~ Tool Company's price would be, but there were several variables in it, and he couldn't tell me either exactly what the Hughes Tool Company price would be or the terms on which we could take an assignment if there was in fact an assignment.

【656】 Q. You understand that it is normal under a purchase contract with a manufacturer of aircraft that the exact price is subject to variation based upon events and change orders and various details relating to the aircraft?

A. Yes, I am quite conscious of that.

Q. A moment ago you estimated that the commitment of the Tool Company would be in the neighborhood, as you understood, of \$5 million per aircraft, or \$65 million for the 13—you remember testifying to that effect?

A. Yes.

Q. Was that estimate on your part based upon what Mr. Rummel had told you in these discussions you had with him?

A. It was.

Q. Have you had occasion to subsequently find out whether or not the estimate of \$5 million per aircraft is fairly close to what you would anticipate would be the price for a 990 aircraft?

A. It is my understanding that it is fairly close to what I would anticipate the price of a 990 aircraft to be.

*Tillinghast—Deposition*

Q. Isn't it also true, Mr. Tillinghast, that in [657] order to determine the desirability of an aircraft you have to consider the cost of the aircraft for the purpose of determining whether its use along various segments of the route of the airplane will permit you to make money or lose money?

A. No doubt about it.

Q. I thought that you also explained that you had very carefully studied, between March 30th and April 27th, a report of the operating personnel that included their recommendations and evaluations of the 990 aircraft.

A. That's correct.

Q. Are you trying to tell me now, Mr. Tillinghast, that these studies made by TWA, evaluating the advantages and disadvantages of 990 versus the Boeing, this was done without any reliable information of any kind as to the cost of such aircraft?

A. It was done without any specific advice from Hughes Tool Company as to the price at which Hughes Tool Company would in fact assign these aircraft to TWA.

Q. But you knew even at that time, even with your short experience in the airline industry, or with TWA, that TWA had traditionally obtained aircraft from the [658] Hughes Tool Company at the Hughes Tool Company's cost?

A. I understood that that had happened on quite a number of occasions.

Q. Wasn't it your understanding that if these aircraft were, pursuant to past practices that Mr. McCone referred to, made available to TWA it would be, presumably, at the actual cost to the Tool Company, a figure which is not determinable until the aircraft are ready for delivery?

A. I did not know, and had no way of knowing, in fact, at what price the Tool Company would make them available.

*Tillinghast—Deposition*

Q. Am I to understand from your testimony, Mr. Tillinghast, that when you were discussing with Mr. McCone the advantage and lack of advantage of considering bailing out the Tool Company or the desirability of these aircraft you had no idea whatever as to what those aircraft would cost?

A. That is your statement, Mr. Davis, not mine.

Q. I am asking what yours was.

A. No, I had a knowledge of a global figure which 990s should cost. I had no knowledge as to the terms on which Hughes Tool Company would in fact make them available to TWA.

【659】 Q. But you knew that the past practice of the Tool Company had been to make them available to TWA at no more than the cost of the Tool Company?

A. I knew in a general way what the past practice was, but I had no way of knowing whether the past practice would in fact be followed in the future, or, in fact, whether Hughes Tool Company would make the planes available.

Q. Mr. Tillinghast, isn't it true that at that time you were concerned in pursuing a financing program with the lending institutions relating to the Boeing aircraft and that is what primarily was on your mind?

A. That is not so, Mr. Davis.

Q. Are you aware of the extent to which Mr. Breech consulted or discussed this matter of additional jet aircraft with Mr. Rummel?

A. Except for discussions at the April 27th directors' meeting, and possibly also at the June directors' meeting, I have no knowledge that Mr. Breech ever discussed the question with Mr. Rummel.

Q. Excuse me for interrupting the train of thought, but it suddenly occurred to me that since your counsel produced these two files of documents marked Plaintiff's 【660】 Ex-

*Tillinghast—Deposition*

hibits 1 and 2, intermingling two requests of mine, let me go back for just a moment and ask you now to examine those two files and identify the documents which you previously testified constituted malicious and willful or other kind of interference by Hughes Tool Company or me or any representative of the Tool Company.

As before, I would appreciate it if you would clip the document so that it later may be marked for identification.

Mr. Sonnett: I think I will have to undertake to answer that question, Mr. Davis. It is argumentative.

It is the position of TWA that all communications by you and by Mr. Holliday in this connection were acts in furtherance of the conspiracy and other violations of law charged in the complaint.

Mr. Davis: I appreciate that, Mr. Sonnett.

My question is to the witness. You may direct the witness not to answer if you choose to.

Mr. Sonnett: I advise the witness that your question is argumentative, and therefore does not require an answer.

Q. Mr. Tillinghast, you recall testifying, do you [661] not, that you received and knew of communications by the Tool Company which you characterized as being unwarranted interference with the affairs of TWA—do you recall your testimony in that regard?

A. I recall my testimony in that regard.

Q. Do you also recall testifying that you had reference to dozens of communications and telegrams?

A. I don't think I said dozens, Mr. Davis.

Q. Have you finished your answer?

A. Yes.

*Tillinghast—Deposition*

Q. Without reference to the number of documents, which I believe you did testify to at one point, let me refer you to page 472 of your testimony. Let me start you, if I may, at page 471, when there was again some discussion between counsel as to the line of that inquiry.

At the bottom of page 471 you, as a witness, said:

"Mr. Davis, let me say I am referring to all of the letters you wrote, which were very numerous and lengthy and considerable, from the period beginning about the 15th of May and continuing through the period really up to the present."

The next question was:

【662】 "Those are the communications which you feel constitute interference by the Tool Company in the affairs of TWA?"

"A. Oh, I didn't say that, Mr. Davis. I think some of the letters were appropriate, perhaps proper statements of position to management, and others were unwarranted interference in management of TWA."

The next question was:

"Will you identify, if not by exact dates, the letters or the number of letters which you have in mind as letters which you felt constituted unwarranted interference in the affairs of TWA?"

Then, if you will recall, Mr. Tillinghast, just subsequently you felt that they were, on page 473, where your answer was:

"Well, Mr. Davis, they were so numerous that it would be difficult for me to recall all of them."

*Tillinghast—Deposition*

You have before you, Mr. Tillinghast, the file prepared by your counsel which purports to include all the letters and communications which your counsel, in support of the complaint, feels constitute unwarranted interference. I am asking you to identify the [662A] communications which you had in mind when you testified as you did.

Mr. Sonnett: Are you through?

[663] Mr. Davis: I have asked a question, Mr. Sonnett.

Mr. Sonnett: You have made various references to what TWA's counsel feels or what these files are supposed to represent in the judgment of TWA's counsel, and you are quite incorrect.

They represent an effort to assemble for you, in response to a belated request, communications from you or Holliday or others acting on behalf of Hughes Tool Company to TWA, and, I think, and I am informed, that they represent all of the written communications that we have in the files.

As to their evidentiary significance, Mr. Davis, this is a matter that the Court is going to have to determine, and I don't propose to have you get into a debate with the witness as to what document proves what.

These are communications that you sent or received or Holliday sent or received. They speak for themselves. The best evidence of what they say is in the documents.

I don't suppose you want to quarrel with the authenticity of these copies, or of the originals, in some cases, bearing your own signature, but it seems to me you are taking an awful lot of time in nagging [664] at a question of let's debate what the documents prove.

*Tillinghast—Deposition*

If you call the witness' attention to any particular document in the series of communications, you want to ask him any questions about conferences, discussions, or whatever he did or said in response or in connection therewith, go ahead.

By Mr. Davis:

- Q. Do you understand my question, Mr. Tillinghast?  
A. Yes, I understand your question.

Mr. Davis: May he answer the question, Mr. Sonnett?

Mr. Sonnett: I don't understand the question, myself.

Mr. Davis: Will you read the question back to the witness? I know there was some lapse of time since my question.

Mr. Sonnett: You see, if you put questions without oratory we would be better off. Your reference as to what TWA's counsel intended or thought or believed or how these documents were assembled, was inaccurate. So I had to correct it.

(The question was read.)

Mr. Sonnett: I object to the form of the [665] question and advise the witness not to answer it.

Q. Mr. Tillinghast, will you identify from the material which is before you the letters or communications which you had in mind when you testified as you did at page 471 and 472 of the transcript?

A. Well—

Q. To avoid wasting time, you need not refer to communications which you described as being appropriate. I am interested solely in your identifying those documents

*Tillinghast—Deposition*

which you felt were unwarranted interference in management of TWA.

A. Well, Mr. Davis, let me first say this, that I think this whole line of correspondence was for the purpose and intent of interfering unduly with TWA's purchase of Boeing aircraft.

But dealing specifically with those letters which affirmatively caused interference, and leaving out the routine ones—

Q. You mean routine letters of interference? I don't want you to leave out anything, Mr. Tillinghast.

A. Then I will have to say, Mr. Davis, that your letter of May 16, 1961, written to the board of directors, saying that you had been retained by Hughes Tool Company in connection with its acquisition and possible distribution of [666] debentures—

Q. Wasn't that a letter by me as a member of the firm of Simpson, Thacher & Bartlett?

A. That's correct, yes.

Q. It was a letter by Simpson, Thacher & Bartlett to the board of directors of TWA, dated May 16th?

A. That's right.

Q. That is one letter that you had in mind as being an interference with TWA—

A. To the extent that it was part of an overall plan to interfere with the purchase of Boeing aircraft, although I suppose the letter, on its face, is, let us say, fairly innocuous and routine.

The letter of May 19, 1961, to the Securities and Exchange Commission, is, in my view, a clear interference with the management of TWA.

Your telegram of May 22, 1961 appears to be routine and harmless.

*Tillinghast—Deposition*

Q. Likewise, the telegram of May 22, 1961, which merely advises of Simpson, Thacher & Bartlett's withdrawal.

Please clip those. I think it will prevent any possible error by the reporter as he subsequently marks them, so we will be sure the court record will be complete as well as accurate.

【667】 Mr. Sonnett: Let's be clear, so we don't have any further needless controversy, you are asking the witness to clip not the telegram from Simpson, Thacher advising of their withdrawal, you are asking him to clip only the ones which he characterizes as overt and clear indications of interference?

Mr. Davis: I am asking him to identify what he was referring to when he testified as he did at the parts in the record that I previously mentioned, Mr. Sonnett, and since in one of his answers he admitted that some of them were appropriate, I am telling him that I am not asking him to identify any communication which he thought was appropriate.

Mr. Sonnett: Okay. All right. Now we understand what you are supposed to do with the paper clips.

Mr. Davis: Whenever you are interested to pursue the subject as to what happened in connection with the withdrawal of Simpson, Thacher & Bartlett or my withdrawal from that firm in order to continue to represent Hughes Tool Company so as to bring out the facts, I will be very happy to pursue that subject either under oath or in appropriate affidavits to the Court.

Mr. Sonnett: Mr. Davis, I know the firm of 【668】 Simpson, Thacher & Bartlett for many years, and I regard it as an outstanding and very distinguished firm.

*Tillinghast—Deposition*

A. A letter of May 24, 1961, from Mr. Settles to Mr. Duckworth, which, on its face, is harmless, except in the light of the purpose for which it was written.

The same—well, on May 25, 1961, there is a letter to Mr Hocker of the Securities and Exchange Commission, which I deem to have been for the purpose of delaying the effectiveness of TWA's registration.

On May 25, 1961 there was a letter from Mr. Settles addressed to me, on its face unobjectionable, except for the purpose for which it was written.

The same may be said for the second letter—I will clip the two of them together here—from Mr. Settles as of the same date.

On May 26, 1961 there is a letter from Mr. Davis to the Irving Trust Company, the Equitable Life Assurance Society, Metropolitan Life Insurance Company, the director of Trans World Airlines, and Messrs. Breech, Olds and Holliday, the purpose of which, in my opinion—the purpose and effect of which, in my opinion, was to interfere with the affairs of TWA.

There is a letter dated May 26, 1961, from Mr. [669] Holliday to Mr. Breech, Mr. Olds and Mr. Holliday, which, on its face, appears to be harmless.

There is a letter dated May 26, 1961—

Q. Excuse me. I don't think you finished your last answer.

Mr. Davis: Read back what Mr. Tillinghast said.  
(The answer was read.)

Q. Is that what you said, Mr. Tillinghast?

A. Yes.

Q. I am not asking you to identify those that you consider harmless.

*Tillinghast—Deposition*

A. I am sorry. There is a letter dated May 26th—I will skip that.

Telegram dated May 31, 1961, from Hughes Tool to Boeing Aircraft Company.

Letter dated May 31st—it should be telegram dated June 1, 1961, from Chester C. Davis to Mr. Rowe.

Telegram dated June 2, 1961, from Mr. Holliday to me.

Letter dated June 4, 1961, from Mr. Davis to Mr. Rowe.

Letter dated June 4, 1961, from Mr. Davis to Mr. Olds.

【670】 Letter dated June 8, 1961, from Mr. Davis to Mr. Breech.

Letter dated June 9, 1961, from Mr. Holliday to me, which on its face appears harmless, and appears objectionable only so far as it is part of a plan and conspiracy.

A letter from Mr. Holliday to Trans World Airlines, Mr. Breech, Mr. Olds, Mr. Holliday, Irving Trust Company, Equitable Assurance Society, Metropolitan Life Insurance Company.

Q. When you refer to Irving Trust Company, isn't it addressed to Irving Trust Company as agent?

A. Yes, it is.

Mr. Sonnett: You haven't given the date.

A. Dated June 10, 1961.

Q. Is that what has previously been marked as Defendant Exhibit 10 as containing several proposals (handing to witness)?

A. Yes.

Mr. Davis: Actually, the record might show it is addressed to Messrs. Breech, Olds and Holliday as voting trustees.

Mr. Sonnett: From?

Mr. Davis: From Hughes Tool Company, by Mr. Holliday.

*Tillinghast—Deposition*

【671】 Mr. Sonnett: The same Mr. Holliday?  
Mr. Davis: Oh, yes.

Mr. Sonnett: Now I understand the true meaning  
of the song I'm Going To Sit Right Down And Write  
Myself A Letter.

Mr. Davis: When they do that, please send it  
COD to Mr. Sonnett, because we don't want to pay  
for it.

Mr. Sonnett: I will pay for it. It was worth it,  
Mr. Davis.

【672】 A. A telegram dated June 20, 1961, from Mr.  
Holliday to Mr. Sessel, a copy of which, I think, or a tele-  
gram similar to which was sent to each of the other  
directors.

A letter dated June 21, 1961, from Mr. Holliday to the  
board of directors of TWA.

A letter from Mr. Davis to Mr. Rowe of June 21, 1961.  
Letter from Mr. Settles dated June 27, 1961.  
Letter of June 30, 1961, from Mr. Davis to Mr. Reed.  
I think that covers the list, Mr. Davis, up to the filing of  
the complaint.

Mr. Davis: Will the reporter then mark all those  
documents identified by Mr. Tillinghast as Defendants'  
Exhibit 11, and each document identified with a  
letter.

\* \* \* \* \*

【857】 Q. Then I believe you testified that the other oc-  
asions that you recall, when you discussed the 【858】 finan-  
cial condition or financial problems, as I understood them,  
the Tool Company, was in connection with this subordi-  
nated debenture offering?

A. Yes.

*Tillinghast—Deposition*

Q. And that was a discussion at that time that you had with Mr. Leslie?

A. Yes.

Q. What was the occasion for that discussion? Can you give me the substance of what was said?

A. Well, the occasion for the discussion, Mr. Davis, as best I recall it, is that Mr. Leslie came into my office one day and said that he had been talking with a Mr. Forrester whom he knew—I believe they both live in Greenwich—and that Mr. Forrester said that he had been retained just a day or two before in order to handle a proposed public offering of Hughes Tool Company share—secondary offering of the Hughes Tool Company share of our subordinate debentures.

He said that Mr. Forrester wanted to talk with us about a possible delay of the effective date of our offering so as to accommodate this.

I remember saying to Mr. Leslie, or asking Mr. Leslie what did he think this was all about, and did he have any recommendation. He went on to say—

【859】 Q. "He," being Leslie?

A. Leslie. He went on to say that he had been associated with Mr. Hughes for years, and knew him like a book, and that one thing he knew about Mr. Hughes was that if he was planning to go across the street to buy a package of cigarettes, that he would say that he was going in the other direction to go to the bathroom.

He said, "You better take a good, hard look at this before you say anything about it."

We discussed why Hughes Tool Company wished to dispose of these. Whether it presaged a decision to sell out its interest in TWA or whether it indicated something else, and without having a very clear recollection in my mind just what he had to say about the details of the Hughes Tool

*Tillinghast—Deposition*

Company's finances, I do recall that there was some discussion of it at that time.

Q. That offering by TWA was one which was being undertaken pursuant to the agreements entered into in the December 1960 financing, isn't that right?

A. That is correct.

Q. That offering by TWA was not designed to raise any cash by TWA, was it?

A. No, that was merely to re-finance the obligation to Hughes Tool.

[860] Q. The \$100 million interim note to Hughes Tool?

A. That is right.

Q. So that the timing of that offering would not result in TWA having any more or less equity money or working capital or cash, isn't that right?

A. That is correct.

Q. Except perhaps to the limited extent to which the Tool Company had an option to subscribe to an additional \$11 million-some odd of these debentures?

A. So far as the timing is concerned.

Q. That offering was for \$11 million, but only the Tool Company had an option to subscribe to the additional \$11 million; isn't that correct?

A. Substantially, yes.

Q. Mr. Leslie discussed with you an approach made to him by Mr. Forrester; is that correct?

A. Right.

Q. Mr. Forrester is a senior executive of Merrill, Lynch, Fenner & Bean; is that correct?

A. He is a member of the firm. I am not sure just what his seniority is.

Q. You never had any reason to doubt the bona fides of Mr. Forrester or Merrill, Lynch, have you?

A. No.

*Tillinghast—Deposition*

【861】 Q. And Mr. Leslie reported to you that apparently the Hughes Tool Company was interested in making a secondary offering?

A. That is correct.

Q. And did that indicate to you that therefore the Hughes Tool Company was interested in effect of realizing some cash?

A. Well, that would indicate that, yes.

Q. Was it your understanding that the Hughes Tool Company had furnished a great deal of cash in connection with the aircraft equipment obtained by TWA as a result of orders placed, or the transactions which took place in 1959 and 1960?

A. Yes, I was aware of that.

Q. And the Tool Company in connection with the 1960 financing, had received this \$100 million interim note rather than cash?

A. That is right.

Q. The \$100 million note in effect reflected the cash investment made by the Tool Company in connection with the aircraft obtained by TWA?

A. That is my understanding.

Q. And now apparently the Tool Company indicated an interest or desire to get some cash back; is that right?

【862】 A. Yes.

Q. And you thought in your discussions with Mr. Leslie that there was some underlying motive of the Tool Company that should be explored?

A. Mr. Leslie raised that question, yes.

Q. That was when Mr. Leslie explained to you that based upon his prior association with Mr. Hughes, he felt that Mr. Hughes was likely to go a long way around to buy a package of cigarettes?

*Tillinghast—Deposition*

A. Right.

Q. Was there any discussion at that time as to what would the Tool Company do with all this cash if it once got that secondary offering—if it was successful?

A. I think, as I recall it, Mr. Davis, there was some discussion of whether the Tool Company was hard up and really needed this money, and what they would do with it. I don't remember much of the detail of what was said, but I know that general subject was discussed.

Q. I would like you to concentrate on that conversation with Mr. Leslie, if you will, please. I would like you to tell me whether or not in effect there was a discussion with Mr. Leslie speculating as to whether or not the Hughes Tool Company might have in mind a plan for re-financing the TWA debt to the lending institutions?

【863】 A. I believe, Mr. Davis, that there was some mention of that possibility.

Q. It was discussed, wasn't it?

A. I believe it was discussed.

Q. That was an important subject to you, was it not?

A. Not terribly, no, sir.

Q. If you recall, when you were hired as president, one of the matters of concern to you—whether you raised the subject or Mr. Breech did—had to do with the possibility of the Tool Company ever being able to re-finance?

A. That is correct.

Q. And here we were in the same year, in May of the same year, and there was a move made by the Tool Company which on the surface at least appeared desirous of producing about \$100 million in cash, and you didn't associate the two possibilities at all in your mind, Mr. Tillinghast?

*Tillinghast—Deposition*

A. Mr. Davis, I am sure that I must have associated the two things in my mind in a broad sense. It has been my feeling, however, that so far as the management of TWA is concerned, its job is to manage TWA—to try to further the interests of the corporation and all of its [864] stockholders—and not be concerned with matters personal to particular stockholders.

Q. I am not inquiring at this point as to your views as to the duties of the management of TWA. I am interested in what took place when Mr. Leslie reported to you that Mr. Forrester had been asked by the Tool Company to develop a program designed to effect a secondary offering which would have given the Tool Company, or replenished the Tool Company with more or less \$100 million.

A. I have reported it as best I can, Mr. Davis.

Q. Do you think you have fairly and adequately and fully described your conversation with Mr. Leslie in discussing or speculating as to what Mr. Hughes or the Hughes Tool Company was up to?

A. As best I can recall it at the moment, yes.

Q. Do you have any notes or letters or communications that you made to anyone else which would help you to refresh your recollection?

A. Not on this subject, no.

Q. Do you have any notes, in Defendants' Exhibit 1, your calendar, that would help you to identify about when it was you had this conversation with Mr. Leslie?

A. Yes, I can tell you when it was. If I am not [865] mistaken, it was on the 11th of May, because I believe it was the day before I sat down with Mr. Forrester and some other people to discuss this specific request.

Q. As a result of your conversation with Mr. Leslie, you asked him to arrange for a meeting between you and Mr. Forrester and others?

*Tillinghast—Deposition*

A. Yes. I believe that the purpose of Mr. Leslie's coming in to my office was in order to say that Mr. Forrester wanted to come up and discuss the matter with me.

Q. You find that entry on May 12th, do you not?

A. That is correct, yes.

Q. And Mr. Leslie spoke to you about that on May 11th, the day before?

A. That is correct.

Q. Before you met with Mr. Forrester, didn't you call Mr. Breech to tell him about the information?

A. No, I am quite sure I called Mr. Breech after I talked with Mr. Forrester.

Q. You mean on the 12th?

A. On the 12th, yes.

Q. Tell us about your meeting with Mr. Forrester on the 12th then.

A. Mr. Forrester came up with his lawyer, Mr. Hagarty.

[866] Q. Of the Sherman, Sterling firm?

A. Yes. We discussed this thing, and he outlined it.

Q. What did he outline to you?

A. He outlined the proposal that they wanted to make.

Q. Who is "they"?

A. Merrill, Lynch—wanted to make for the secondary offering, and their desire to obtain a week's postponement of our offering, in order that they might do a secondary.

I told them that I was very concerned about the fact that we had committed ourselves to the Boeing Company for planes that we had to have our financing completed by the end of the month, by the 31st of May, as I recall it, and that one thing that I had to be concerned about was whether or not a postponement of this might interfere in any way with the consummation of the Boeing program, and the obtaining of the commitments necessary to carry out the Boeing program.

*Tillinghast—Deposition*

【867】 Q. Will you explain at this point your understanding as a chief executive of TWA, what the relationship was of this offering by TWA of these convertible debentures, which would not produce any cash for TWA, the financing arrangements with the lending institutions, which was related to this Boeing purchase program—

Mr. Sonnett: Would you mind reading that back?

(The question was read.)

A. One of the obvious questions in my mind, Mr. Davis, was whether or not if we ran into a serious delay on this, whether or not it might in any way affect our Boeing financing. With that in mind, I talked with Mr. Brandi.

Q. Of Dillon, Read?

A. Yes, to ask him whether in his opinion it would make any difference one way or another to the consummation of the Boeing financing. He said he thought it would. He thought it would be undesirable to get mixed up in anything that would involve a serious sag in the schedule.

For that reason I was very concerned at the time of this meeting with Mr. Forrester to see whether 【868】 or not he could say anything that would change my judgment.

Q. Let me see if we can get this straightened out in my mind.

A. May I finish?

Q. Please continue.

A. My judgment that it was the most unlikely thing that one could suddenly bring in a third party, and in one week's time turn an offering of this sort into an underwritten public offering.

I specifically taxed Mr. Forrester and Mr. Hagarty with the question of whether or not they could assure me that in fact this could be done, and told them my own limited ex-

*Tillinghast—Deposition*

perience in the securities field—told me that even under the best circumstances it would be most unlikely that one could do this within that period of time. And I thought if Mr. Hughes was genuine in wishing to make an offering of his interest, that we would extend to him every cooperation on a secondary offering, and indeed the lawyers discussed how by stickering the prospectus, this could be done immediately following our offer.

To come to the end of the discussion, I told Mr. Forrester that I quite appreciated his interest [869] in engaging in this activity, but personally I thought it was an impractical thing to do, and that while it was not a matter on which I wished to make a decision myself without consulting my chairman, in fairness to him I could only say that my recommendation would be that we not postpone our offering, but that we go right ahead with it, and extend to Hughes Tool, if it wished to do so, every courtesy with respect to a secondary offering at an immediately following date.

Q. Is that the end of your answer?

A. That is the end of my answer.

Q. Now let us go back to May 11th, when Mr. Leslie first talked to you. Do you understand?

A. Yes.

Q. That was the first time that you heard of the plan of the Tool Company to make a secondary, is that correct?

A. That is correct.

Q. The next day, the 12th, you met with Mr. Forrester?

A. That is correct.

Q. Am I to understand that between the 11th and the 12th, you consulted with Mr. Brandi of Dillon, Read?

[870] A. That is correct.

Q. In other words, after Mr. Leslie made his report to you to the effect that Mr. Forrester wanted to speak to you—

*Tillinghast—Deposition*

A. That is right.

Q. You became concerned and sought the advice of someone else?

A. That is correct.

Q. The first thing I want you to explain to me is your concern as a chief executive of TWA, to what was the problem that you envisaged that required you to consult someone.

A. The question in my mind, Mr. Davis, was that raised by Mr. Leslie, and I will have to amplify slightly what I have already testified to.

One thing that Mr. Leslie said in the course of this conversation relative to Mr. Hughes, was that one of the particular proclivities was delaying and trying to get extensions of time, and if you can't get it decided the way you want it now, just postpone it and postpone it.

He raised the question at that time as to whether or not this would be just the beginning of a series of postponements, the net effect of which would be to [871] derail—would be to prevent the consummation of the subordinate debenture financing on the schedule provided, and by that derail the Boeing financing which we had until the 31st of May to complete.

I was naturally very concerned with seeing to it that nothing was done which would prejudice the Boeing financing.

Q. I would like to take this one at a time, Mr. Tillinghast.

A. All right.

Q. The 1960 financing required TWA to make this debenture offering on or before May 31st?

A. Right.

Q. That was an agreement between the Tool Company on the one hand, and TWA on the other, is that correct?

*Tillinghast—Deposition*

A. Right.

Q. And that financing was not going to produce any cash to TWA—that offering?

A. Not unless we sold more than \$100 million.

Q. Whether you sold more than \$100 million was solely at the election of the Tool Company?

A. That is right.

Q. Mr. Leslie indicated to you that this request was about to be made on behalf of the Tool Company, on [872] May 11th—that might have the effect of delaying this transaction beyond May 31st, if you granted further and subsequent delays?

A. That is right.

Q. You had a feeling that Mr. Hughes or the Hughes Tool Company would make repeated requests that might delay this offering beyond May 31st? That was your concern, was it not?

A. That is correct.

Q. That would have involved possibly some new agreement or understanding between the Tool Company and TWA, because you had a commitment to do it by May 31st, is that correct?

A. That is correct.

Q. What I am failing to understand is, the relationship between that obligation to the Tool Company and the financing of the Boeing acquisition, that you had been negotiating with the lending institutions.

Can you explain how you, as a chief executive officer—what was concerning you? What relationship was there between a delay in this offering by TWA, and the financing of the Boeing purchase?

A. Mr. Davis, there were really two things that concerned me.

*Tillinghast—Deposition*

【873】 Q. Excuse me for a moment before you answer. I am not interested at this moment what Mr. Brandi told you. I am asking you what was concerning you before you went to see Mr. Brandi.

A. I was concerned about two things. One, whether this was a diversionary tactic.

Q. Diversionary tactic by whom?

A. By Hughes Tool Company.

Q. Diversion from what?

A. An attempt by Hughes Tool Company somehow to interfere with and prevent the consummation of the Boeing deal.

Q. At that point you had not received any letters from anyone from the Tool Company objecting to the Boeing deal?

A. That is correct.

Q. In fact, you hadn't disclosed the proposed Boeing deal to the Tool Company?

A. Yes, we had.

Q. In what way?

A. In the minutes of the directors' meeting, and quite a number of things that Mr. Holliday had received.

Q. You anticipated that the Tool Company might [874] have some views different from or adverse to those held by the TWA management with respect to the Boeing program, is that correct?

A. That question came up in my mind when Mr. Leslie talked with me on the 11th.

Q. And therefore you were suspicious that this move by Mr. Hughes or the Tool Company might be used in what way that would interfere with the Boeing program?

A. As a means of preventing the consummation of the financing that would make the Boeing deal possible.

*Tillinghast—Deposition*

Q. How could that happen other than possibly the re-financing of the existing indebtedness, you mean?

A. Mr. Davis, that very nearly did happen as a consequence of your efforts.

Q. The re-financing?

A. No, the consummation of the Boeing financing was in fact almost upset as a result of your actions between this time and the two weeks subsequent to that.

Q. I appreciate that. At the moment, however, I am trying to understand how the successful secondary offering by the Tool Company, which would have put into cash \$100 million, more or less, how that fact in your judgment, on May 11th, contributed to your feeling [875] that the Tool Company might have some devious plan to interfere with your Boeing program?

A. The secondary offering, the successful secondary offering in and of itself would have presented no problem at all, Mr. Davis. What I was concerned about was that this was not a genuine proposal, and that the effect of granting a week's delay would have been—a week's delay which in my opinion was quite unrealistic.

The effect of that would have been to delay and perhaps prevent the consummation of the subordinate debenture financing, and that if we were mired down in that problem, that the financial institutions would not honor the very informal commitments that we had at that time to go ahead with the financing, and that as a consequence of this, the whole situation would be upset.

Q. I am having difficulty in understanding, Mr. Tillinghast, and I want to give you a full opportunity to explain why you concluded that the possibility which you thought was remote, perhaps, of accomplishment with just a week's delay—why the possibility that the Tool Company

*Tillinghast—Deposition*

might realize \$100 million in cash, would have an adverse effect, or mire you down, or bog you down in your Boeing program.

【876】 A. You keep trying to put words in my mouth. I tried to say before that the consummation of the secondary offering by the Hughes Tool Company would not have been any problem whatever.

Indeed, I would have welcomed it. But what I was concerned about was not that we were dealing with a secondary offering, and the realization of money by the Hughes Tool Company, but rather a maneuver which would have the effect of preventing consummation of our offering. And through that would upset and prevent the Boeing financing.

Q. Was there some condition in the negotiations with the lending institutions in connection with this Boeing financing that you had in mind, that would be upset, if for any reason this offering by TWA, which was not going to realize any cash, was delayed beyond May 31st?

A. There was no condition, Mr. Davis. I can only say that the consummation of the secondary financing—I am sorry—the consummation of the debenture offering on the time schedule originally planned was one of the background factors in everyone's contemplation in connection with the financing for the Boeing plans.

I was deeply conscious of the fact that I had 【877】 expended \$850,000, and was committed for \$187 million, for which I had to get my financing nailed down, and I wasn't going to do anything that carried with it a serious threat of unhinging that financing.

Q. Mr. Tillinghast, let me lead you a little, if I may. Prior to this additional financing of Boeing, for this \$187 million and a half—the amount due the financing institutions was how much?

A. Before this?

*Tillinghast—Deposition*

Q. Before the Boeing financing, what was the amount due to these lending institutions?

A. I am not sure of the amount actually due at that time, but the amount of the commitment was \$165 million, all of which I don't think—

Q. Isn't it true if the Tool Company realized \$100 million in the marketplace, that it might be close enough to the goal of refinancing that \$165 million?

A. That was certainly a possibility.

Q. And you discussed it?

A. Yes.

Q. It was very important to you that the additional financing with the lending institutions for \$147 million be an accomplished fact before the Tool Company could raise a sum of money that conceivably might [878] permit it to refinancing the 1960 debt, isn't that right?

A. No, it is not.

Q. Isn't it true, Mr. Tillinghast, that in February 1961, you discussed with Mr. Breech, the Tool Company would have difficulty in refinancing for additional jet equipment?

A. At the time I talked with Mr. Breech on the 28th, I was concerned with the question as to whether or not I wanted to seriously entertain the possibility of becoming a chief executive of this company. Subsequent to that time, in pursuance of the discussions had at that time, I worked out a contract which I thought put me in a position to call the shots as I saw them, without concern as to whether or not the control of TWA stayed in one place rather than the other.

At the time you speak of, and since that time, I have tried to conduct the affairs of TWA in such a way as not to favor or prejudice any particular stockholder, and I think my job is to call them as I see them, without regard to these things that you are concerned about.

*Tillinghast—Deposition*

Q. But it is a fact that the May 31st date with respect to the issuance of these debentures by TWA [879] was a time limit [which] had been placed for the benefit of the Tool Company rather than for the benefit of TWA?

A. So far as I know, yes.

Q. So that if there had been a delay beyond May 31st, or if in fact TWA should have consented to delays beyond May 31st, it would have been basically a detriment to the Tool Company rather than TWA?

A. It would have been a detriment to the TWA if it in any way affected the Boeing financing.

Q. The only way in which it could have affected the Boeing financing is that the Tool Company would have had a lot of cash in its pocket?

A. No, it is not, Mr. Davis, and you know a lot better than that.

Q. Isn't it true, Mr. Tillinghast, that it was Mr. Breech who suggested to you that before you took the position you ought to consult with Mr. Brandi of Dillon, Read for expert advice?

A. It is not my recollection. At the moment I don't have any recollection of having talked with Mr. Breech about this until after I talked with Mr. Forrester. Possibly if I did, but if I did, it doesn't stick in my mind.

As I recall it, that was something that Mr. [880] Leslie and I agreed on as the result of this discussion which I have already described.

Q. I am trying to refresh your recollection that the first time you talked to Mr. Brandi of Dillon, Read, was after your first meeting with Mr. Forrester, and after you talked to Mr. Breech, who warned you or suggested to you that before you took a position in this matter, you ought to consult "the financial advisers"?

*Tillinghast—Deposition*

A. No. As a matter of fact, I talked with Mr. Brandi just before I talked with Mr. Forrester.

Q. On the 12th?

A. On the 12th.

Q. After talking to him on the 11th?

A. I don't think I talked with him on the 11th.

Q. After your conversation with Mr. Leslie?

A. No, I think I talked with Mr. Brandi, so far as I can recall, only on the 12th.

Q. Was that a telephone conversation, a meeting or a conference?

A. It was a meeting in my office.

Q. Who else was there?

A. Mr. Leslie, Mr. Rowe was there, I think.

Q. Mr. Rowe, the general counsel of TWA?

【881】 A. Mr. Rowe who sits down there.

Q. Counsel for TWA?

A. Yes. I am trying to remember when he got there. Mr. Reed, I think, was also there.

Q. Of the Hughes, Hubbard firm?

A. Yes.

Q. Counsel for the voting trustees?

A. Yes. At the time of the discussion with Mr. Forrester—and I think he was there at the time of the discussion with Mr. Brandi as well. I think that is the extent of it.

The Special Master: Let us take a five-minute recess.

(Whereupon, a short recess was taken.)

By Mr. Davis:

Q. Mr. Tillinghast, before the recess, you were about to finish to identify the meeting at your office with Dillon, Reed, and others. But before you resume at that point, I

*Tillinghast—Deposition*

overlooked asking you whether at or about that time you had a discussion with Mr. Sessel as to what the plans or purposes or consequences to TWA might be if the Tool Company was able to raise a substantial amount of cash.

A. No, I don't think I did, Mr. Davis. I am [882] quite sure that somewhere within this period, I mean sometime between the 11th of May and the board meeting on the 17th of May, I discussed this with Mr. Sessel, and I know Mr. Sessel was quite concerned that this was a delaying tactic, and should be dealt with as such.

Q. That was between May 11th and May 17th?

A. Yes. I can't tell you exactly when it was in the progression of things, but I know that I discussed the thing with Mr. Sessel, to get his view as to how the banks would react to the thing.

Q. Do you recall more specifically what Mr. Sessel said to you at that time as to what his ideas were of the objectives of the Tool Company, and the plans?

A. No, I don't recall discussing that with him as such. The one thing that sticks in my mind was that Mr. Sessel said not once, but several times, that Hughes always wants time, he wants a week if he can get a week, and if he can't, a day, and if he can't get an hour, he will want half an hour. His view was very definite and strong that if we gave a week's delay, then that would be followed by a request for a further delay and a further delay, and it would be an endless matter.

[883] Q. Did he express the point of view that such delays would be injurious to TWA?

A. Yes, he expressed the view that failure to carry out a consummation of the subordinate debenture offering might raise questions as to what it was all about.

Q. Raise questions in whose mind?

*Tillinghast—Deposition*

A. The financing institutions' minds, and might prejudice the Boeing financing.

Q. You keep referring to problems being raised in people's minds. It is not clear to me that you have identified to me what problem you had in your mind or you understood them to be referring to, Mr. Tillinghast.

A. I personally was concerned about the fact that we had a very short time within which to finalize our Boeing financing.

Q. I understand that.

A. And I didn't want to do anything that might give anyone any reason or concern for not carrying through with the financing on the basis of the informal commitments given. It was my strongly held view then, as it is now, that when you are dealing in figures of this magnitude, that the sooner you get the thing signed, sealed and delivered, and definitely nailed down, the better off you are.

【884】 Q. Do you know who Bob Kerr is?

A. Yes.

Q. Who is he?

A. Mr. Sessel's assistant.

Q. Is he at the Irving Trust?

A. Yes.

Q. Only for the purpose of refreshing your recollection, Mr. Tillinghast, let me refer you to some notes of a telephone conversation between Mr. Kerr and Mr. Gordon of the Bank of America.

Mr. Sonnett: Would you mind marking that and identifying the source, Mr. Davis?

Mr. Davis: I will identify it.

*Tillinghast—Deposition*

By Mr. Davis:

Q. I want you to look at this, and particularly call to your attention the line which says "Odlum and Bautzer are in New York scurrying around on this matter. Ben thinks only one reason why Hughes wants money—to buy out a voting trust. Crown might come up with balance of money."

That is dated May 16, 1961. Does that refresh you at all as to what Mr. Sessel was in fact saying to you as to what the problems and dangers were?

【885】 Mr. Sonnett: Have we identified this document yet?

Mr. Davis: At this moment I merely want to know if this refreshes the witness' recollection. We will get the documents in when we get the Bank of America.

Mr. Sonnett: You have shown something to the witness. It hasn't been marked and identified.

Mr. Davis: I will mark it for identification.

(Transcript of telephone conversation, marked Defendants' Exhibit 22 for identification, as of this date.)

By Mr. Davis:

Q. Now I refer you to Defendants' Exhibit 22 for identification.

Mr. Sonnett: These are notes by who?

The Witness: Mr. Gordon, I gather.

Mr. Davis: Bank of America, Bob Gordon's files.

The Witness: No, it does not.

Q. That was about the time we are now discussing the offering by TWA?

*Tillinghast—Deposition*

A. Yes, this would have been about the time I talked with Mr. Sessel.

Q. And it is your clear recollection that when you discussed this matter with Mr. Sessel, before the board [886] meeting of the 17th, that this subject, if not in those exact words, but the same subject matter did not come up for discussion?

A. Mr. Davis, it is not my clear recollection that this subject did not come up. My only recollection that is distinct of my discussions with Mr. Sessel was to the effect that he was very concerned about this being a delaying and diversionary tactic, and his feeling that it would be a mistake, and maybe spread some doubt and concern among the financial institutions if we failed to go ahead with the debenture offering within the time required by the original—

Q. How about the possibility of the voting trust terminating—that was important, wasn't it?

A. Not to me.

Q. It wasn't?

A. Not in this context.

Q. Do you think the termination of the voting trust might have adversely affected the financing?

A. I am sure it would have.

Q. When you come right down to it, the interference that might have taken place in the Boeing financing program was that if the Tool Company was able to raise that much money, conceivably they might make an effort to [887] terminate the voting trust, and in turn that would affect the lending institutions, isn't that right?

A. No, Mr. Davis. The only way the voting trust could be terminated would be by buying out the whole financing. My concern was not with that. Indeed we expressed the willingness repeatedly to cooperate in every way—

*Tillinghast—Deposition*

Q. Expressed willingness to whom, sir?

A. To Mr. Forrester, and it seems to me to other people, but I know particularly in the case of Mr. Forrester, and I will stick with him. We repeatedly expressed the willingness to cooperate in every way with a secondary offering just as rapidly as the Tool Company wanted to do it, and except for delaying the orderly progression of [our] own financing plans, we did everything we could to cooperate with the Tool Company in anything they wanted to do.

Q. Delaying what financing plans, Mr. Tillinghast?

A. Mr. Davis, I have repeatedly testified to the—the financing that we had to have committed for by the 31st of May.

Q. You are referring to the financing by the lending institutions for the Boeing program?

A. Correct.

Q. And you are saying, as I understand you, that any [888] delay in the offering by TWA of debentures which would not produce any cash to TWA, but which would produce cash to the Tool Company would have an adverse effect on the lending institution?

A. Might have.

Q. And this would be by reason of the possibility that the Tool Company might be in a position to terminate the voting trust?

A. No, those are your words.

Q. Explain in what respects, if you please.

Mr. Sonnett: Explain what?

Q. In what respects would the financing of the Boeing program by the lending institutions be adversely affected because of a delay in the debenture offer by TWA, which was not going to produce any cash to TWA?

*Tillinghast—Deposition*

Mr. Sonnett: I think this has been answered twice already, but if this is the last time, I won't object to it. I think the witness twice covered the subject matter. What counsel is doing is arguing with the witness.

A. Mr. Davis, at this point we had informal assurances from the executives of the financial institutions that they would recommend to their committees participation in the financing to the extent required. There obviously [889] was a serious question in my mind as to whether any substantial delay or change in the program might have the effect of unhinging some of these informal commitments, and I was not going to take any chances of having the financing of the Boeings, even though the chances might be slight.

I talked with Mr. Brandi, and asked his opinion as to whether or not delaying the debenture offering might have an effect on our financing, and his opinion was yes, it might have a serious effect on it, and on the basis of that I wasn't going to take the chance of having this financing abort, and lose either the program or the down payment of \$850,000.

Q. Now, Mr. Tillinghast, let us go to the meeting which you had in your office on the 12th of May. Do you recall you identified Mr. Rowe being there?

A. Yes.

Q. Mr. Leslie?

A. Yes.

Q. Yourself?

A. Yes.

Q. And who else?

A. Mr. Forrester, Mr. Hager, and one other person has come to mind—Mr. Joy, who is an assistant of Mr. Reed. [890]

Q. Prior to that meeting you had a conversation with Mr. Brandi of Dillon, Read?

*Tillinghast—Deposition*

A. That's correct.

Q. And that was a conversation you had with him over the telephone?

A. That was a conversation in my office.

Q. Prior to the meeting when these other gentlemen arrived?

A. Which other gentlemen?

Q. Mr. Forrester, Mr. Carl Rowe, and these others.

A. It was prior to the arrival of Mr. Forrester and Mr. Hager, but as I recall it, after the arrival of Mr. Rowe and Mr. Reed and Mr. Joy, and Mr. Leslie.

Q. In other words, Mr. Brandi joined you at your offices on May 12th?

A. That's correct.

Q. Before Mr. Forrester and his attorney showed up?

A. Correct.

Q. And you were gathering there ahead of time to discuss what position you would take with Mr. Forrester?

A. Correct.

Q. That was based upon the report made to you by Mr. Leslie the day before?

A. In part based on that.

■891■ Q. You had not talked with Forrester between times, had you?

A. No.

Q. Before Mr. Forrester's lawyer arrived, will you describe the substance of what took place insofar as it relates to the subject under discussion, namely, the position of TWA with respect to Mr. Forrester's anticipated request?

A. Yes. We discussed the subject with Mr. Brandi, and said that we were presented with this request, and we would like his views on the position that we should take.

*Tillinghast—Deposition*

I said that I was particularly concerned with one thing, and that is that we had this big program, and to me a very important program in midstream. I wanted to assure myself that nothing that was done in this regard might in any way prejudice the consummation of our financing with the financial institutions.

I said my own limited experience in the securities field made it seem to me a little unrealistic about effecting all of the things that would have to be affected within a week's time. I said even under the best of circumstances, with somebody who had a greater reputation than Mr. Hughes for being easy to negotiate with, I thought this was a tremendously ambitious schedule, and [892] that I personally doubted it could be effected within that period of time.

I said, "I would like your views as to whether this might have any effect on the financing or not."

He said that he felt that it might have a serious effect on the financing. The financial institutions were willing to make the commitments they had made on the assumption that TWA had achieved a degree of independence, and was free to proceed with programs that it considered to be in the best interest of the company, and that if you got into a situation that dragged on and got bogged down in a controversy of one sort or another, he felt no assurance at all that you could count on the financing continuing to be available, and that his very strong recommendation would be that we not postpone the financing, but go ahead—

Q. You are referring to which financing?

A. The subordinate debenture financing—but go ahead on our predetermined time schedule, and if there was a genuine secondary offering in the wind, that could be handled as such.

*Tillinghast—Deposition*

Q. Let us take this piecemeal. Prior to this gathering in your office, to your knowledge had anyone told Mr. Brandi what the meeting was about?

[893] A. I believe Mr. Leslie had talked with him.

Q. Mr. Leslie was fully familiar with the nature and details of Mr. Forrester's request?

A. He was the most familiar one, yes. He had talked with Mr. Forrester.

Q. Wasn't the purpose of the meeting to find out from Mr. Forrester what it is exactly that they proposed to do?

A. The purpose of the meeting was for him to explain in as much detail as he cared to exactly what they proposed to do, and to obtain TWA's agreement to a postponement.

Q. Isn't it fair to say that all Mr. Forrester told Mr. Leslie up to that point was that he had been approached by the Tool Company to see if they would undertake some sort of a secondary, and that Mr. Forrester would like to sit down with you, or whoever, and discuss a program?

A. No, I am sure that isn't the case, because I am quite sure that when this first was mentioned to me, the matter of the delay was in the conversation already.

Q. But my question is whether or not it is your testimony that Mr. Forrester discussed in detail what he proposed with Mr. Leslie on the 11th.

[894] A. My impression is that most of what had been discussed—most of what was discussed in my presence on the 12th, already had been discussed with Mr. Leslie.

Q. And it is your understanding that you asked Mr. Leslie to call Mr. Brandi to arrange this meeting, and tell him what it is that Merrill Lynch wanted to do?

A. It is my recollection that I asked Mr. Leslie to get in touch with Dillon, Read, explain the nature of the request, and get their views as to what effect, if any, it would have on the new financing.

*Tillinghast—Deposition*

Q. And he is the one who arranged for Mr. Brandi meeting at your office the next day, the 12th?

A. I believe so.

Q. You made this suggestion to Mr. Leslie without having heard from Mr. Breech?

A. That is my best recollection. As I recall it at the moment, the first time I talked with Mr. Breech was after I talked with Mr. Forrester.

Q. These gentlemen met in your office before Mr. Forrester and his lawyer arrived?

A. Correct.

Q. At that time there took place the conversation that you described a moment ago?

A. That's correct.

【895】 Q. Without having heard what Mr. Forrester and his lawyer had to say?

A. No.

Q. Somebody must have described what Mr. Forrester and his lawyer were proposing. Who did that? Did Mr. Leslie, did you?

A. Mr. Forrester outlined—

Q. I am talking about before Mr. Forrester arrived.

A. Before Mr. Forrester arrived—excuse me, I misunderstood you. Mr. Leslie, in the prior conversation, I believe, outlined what was proposed.

Q. To Mr. Brandi and Mr. Rowe and Mr. Joy, Mr. Reed's associate or partner. Is Mr. Joy a partner of the firm of Hughes, Hubbard?

A. I don't think so, no. I think he is an associate.

Q. At that time, as I understand your prior testimony—but I want you to change it if it is not accurate—Mr. Brandi in effect confirmed your views, or confirmed the view that the lending institutions that made advances to

*Tillinghast—Deposition*

TWA on the assumption that TWA would maintain a certain degree of independence, I believe you said—

A. That's right.

Q. And if there was anything which might take place to jeopardize that degree of independence, it might have [896] an adverse effect on the Boeing financing?

A. What he said, as I recall it, was that if this degenerated into another Hughes controversy, and it appeared that the company had not achieved the ability to deal objectively with its problems, that it might have a serious effect on the financing.

Q. Mr. Sessel was not there?

A. Mr. Sessel was not there.

Q. So far as you know, how and when was Mr. Sessel first informed about this approach by Merrill Lynch?

A. I can't say. It would have been by Mr. Leslie or myself. Which it was and exactly when it was, I can't recall.

Q. You believe you may have been the one?

A. Possibly, I think it is more likely that it was Mr. Leslie, but it conceivably could have been I.

Q. Before Mr. Forrester and his lawyer arrived, did you or Mr. Leslie, or anyone else at that meeting, suggest that this move by the Hughes Tool Company might be part of a plan to refund or refinance or terminate the voting trust?

A. I don't recall any such discussion, Mr. Davis.

Q. Do you think you would recall it if it had taken place?

[897] A. I think I probably would, but I just don't recall it at this time.

Q. Do you recall with clarity what concepts Mr. Brand was expressing in suggesting that this discussion by Merrill Lynch might interfere with the Boeing financing?

*Tillinghast—Deposition*

A. I think I have already testified as fully as I can about that.

Q. You are satisfied that is as full and as clear a description as you are capable of giving us?

A. At this time, yes.

Q. Do you think there is anything you might do to help you refresh your recollection?

A. Not that I can think of, no. If I re-discussed it with everyone present, it undoubtedly would refresh my recollection somewhat, but as I sit here now, that is the best recollection I can give you.

Q. Did this group arrive at some consensus of opinion? Did anyone express a different point of view in that group?

A. No, I think I summed up the meeting by saying that I wasn't prepared to take any reasonable risk of unseating the Boeing financing, and that unless people could give me assurances that that wouldn't happen, that it was going to be my position that we deny the request.

[898] Q. Did Mr. Brandi suggest that perhaps he ought to discuss it with some of the lending institutions or their representatives before giving any firm views?

A. I don't recall any such thing, Mr. Davis.

Q. Do you recall whether or not he telephoned anyone for the purpose of getting some other points of view?

A. He didn't telephone anyone from my office.

Q. Who were the individuals who were negotiating on behalf of the lending institutions, this Boeing financing?

A. I am not sure I know exactly. I think it was Mr. Kerr, so far as the Irving Trust was concerned—either Mr. Keehn or one of his subordinates so far as the Equitable was concerned. I guess it was Jenkins at Metropolitan, and then each of the banks had a representative involved in it. I know Gordon of the Bank of America was one.

*Tillinghast—Deposition*

Q. You said the senior officer of TWA, negotiating on behalf of TWA, was Mr. Leslie?

A. That's correct.

Q. You did not assume any personal functions in negotiating?

A. That's correct, at this time. On the 29th of May, I very much got into it, but up until that time—

【899】 Q. Mr. Leslie had been handling it?

A. Mr. Leslie had been handling it.

Q. To what extent had Dillon, Read been participants?

A. They had been very active participants, I believe, because they were our financial advisers, and they had been very active in the whole thing.

Q. You mean they had been. I don't understand what you mean by saying "they had been your financial advisers."

A. They were our financial advisers at the time.

Q. As a continuation of the 1960 financing?

A. They handled the 1960 financing, and then separately represented us with respect to the 1961 financing.

\* \* \* \* \*

【914】 Q. Was the consummation of the 1961 financing involved, difficult or complex?

A. I would say it wasn't nearly as difficult or complex as I understand the 1960 financing was. It was not, however, without some difficulties and complexities, particularly as things developed in the matter.

Q. Will you describe the nature of the difficulties and complexities that were involved in the 1961 financing, and if you know, to what extent those were complexities and difficulties that did not exist in the 1960 financing.

A. I would say this, Mr. Davis, that one of the problems of the 1961 financing was the fact that at the time I joined TWA, this had pretty well taken form.

Q. The 1961 financing?

*Tillinghast—Deposition*

[915] A. The 1961 financing had substantially taken form. One of the things that were contemplated was the participation of the Prudential Insurance Company, to the extent, as I recall it, of \$39 million.

We had received informal assurances from Mr. Chap-  
peler—

Q. Of the Prudential?

A. Of the Prudential, that he would recommend it, and he felt confident that his committee would go along.

Then as the result of the publicity and controversy that was raised by Hughes Tool Company, the Prudential pulled out of the deal, and we were then faced with the problem of what we would do in order to take up the slack left by the Prudential.

We had various discussions with Dillon, Read. Dillon, Read, I know, spent a substantial amount of time and effort trying to find other insurance companies who would participate in this and take the Prudential's place without success.

Then later on, when it became apparent that the revenue and earnings forecast which had been made in the first part of 1961, in late February or March, I believe, were not being realized, and that TWA would have a cash problem of meeting the payment schedules under the [916] proposed financing, then it became necessary to work out a modification of the deal, and then more recently, as a consequence, let us say failure of the Caravelle program to materialize, it was necessary once again to try to work out with the financial institutions a further modification of the program.

I would say if one looks at it by hindsight, the 1961 financing has been, let us say, more than averagely complicated.

[917] Q. I understood you to say that this fee had been fixed, at least by the time of the board meeting of July 19, 1961;

A. That's correct.

*Tillinghast—Deposition*

Q. Were you at that time anticipating those complexities that developed in connection with the Caravelle program, which I understood from your prior testimony was around September?

A. No, we certainly didn't anticipate that at that time. In July we were in the middle of what I referred to as the Hughes problems, and the complexities springing from that, both past and potential, were realized at that time.

I would say this fee of \$200,000 was, as I recall, the figures in Mr. Leslie's memo, a more or less average fee for an offering or a financing of this size.

Q. What were the complexities of the Hughes problem at that time, namely, prior to July 19, 1961?

A. Well, I don't know how deeply you want me to go into this, Mr. Davis.

Q. As factually as you can.

A. Going back to the period that we were talking about yesterday, when the question was first raised by Mr. Forrester of Hughes Tool Company's desire to have us [918] postpone for a week the offering of the subordinated debentures—

Q. On May 12th or 11th?

A. On May 12th or 11th—on the 17th we had a TWA board of directors meeting, at which time it had been planned to fix the final details of the offering and become effective the next day.

Q. The price amendment to the registration statement?

A. Yes. As you will recall, you appeared for the first time at that directors meeting, and made a rather lengthy statement at the directors meeting, the substance of which was that unless TWA was prepared to agree to the extension that was being requested, you were going to file, or you were going to object on a variety of grounds to the ad-

*Tillinghast—Deposition*

quacy of the registration statement, and in fact, that same day, if you recall correctly, you sent a letter to the SEC, and we suddenly found ourselves in a highly publicized situation not calculated to make easy the consummation of the financial arrangements.

Q. Excuse me for interrupting you. You are still referring to making difficult the financial arrangement in connection with this convertible debenture issue, all of which was going to go to Hughes Tool Company? Is that the one you are referring to?

[919] A. I wasn't referring primarily to that, but I would include that also.

Q. You are referring to the publicity—

Mr. Sonnett: I object to the witness being interrupted in the middle of an answer which was perfectly responsive to a question, and then Mr. Davis attempting to cut him off before he is through. I think the witness should be allowed to finish the answer which he was in the middle of making when he was once again interrupted by counsel.

The Special Master: Let us try to let him finish his answers.

Mr. Davis: Will you pick up Mr. Tillinghast's answer?

(The record was read.)

By Mr. Davis:

Q. It would help me when you refer to the financial arrangements—when you are referring to financial arrangements for the lending institutions, I wish you would identify it. When you are referring to the financial arrangements relating to the issuance of convertible debentures by TWA, I wish you would refer to that arrangement and when you

*Tillinghast—Deposition*

are referring to some other financial arrangement, I would appreciate it if you would identify [920] it. I think it would save time in the long run if in your answer you would identify the financial arrangements that you have in mind.

A. (Continuing)—the middle of the following week, the committees of the insurance companies were scheduled to meet, to give committee approval to the tentative arrangement that had been made for the Boeing financing. We learned to our disappointment, I think on Wednesday, the 24th, but I wouldn't be sure within a day or so, that Prudential had withdrawn because the committee would have nothing to do with this situation.

That, of course, presented us with a difficult problem of what to do about our financing, and left us in the position where we had only a week left in which to firm up our financing under the Boeing agreement, and being short at that point \$39 million.

Q. Have you finished describing the complexities involved involving Hughes Tool that had a bearing?

A. At this particular point, yes.

Q. You have been referring to the complexities—you had in mind in connection the fixing of the fee of Dillon, Read?

A. Among other things, yes.

Q. In your last answer you referred to the committee [921] I believe the committee of the insurance companies reporting they would have nothing to do with the situation! Did you say something to that effect?

A. Yes.

Q. Will you please identify the committee, the insurance company, or whoever was on that committee, and what situation they would have nothing to do with?

A. Mr. Davis, I know this only third or fourth hand.

Q. From whom did you hear?

*Tillinghast—Deposition*

A. I believe I heard it from Mr. Leslie, and I believe he in turn heard it from Mr. Wadsworth, and I believe Mr. Wadsworth talked with the insurance companies. As it was reported back to me, the Prudential was not satisfied that there might not be some way that the voting trust would be upset, and they didn't want to get into that situation.

As I recall—it was reported to me that Chappalear told Wadsworth that you couldn't re-open this matter with a crowbar.

Q. Did you understand what was meant by saying, "You could not re-open the situation with a crowbar"?

A. There was no point in going back and trying to re-open the matter.

Q. Re-open what matter?

[922] A. The matter of their participation in the financing.

Q. The 1961 financing?

A. Yes, the 1961 financing, Mr. Davis.

Q. Since yesterday, did you have occasion of refreshing your recollection with anyone, particularly with respect to the note I showed you referring to Mr. Sessel and his comment?

A. No, I have not, Mr. Davis.

Q. Did you make an effort to communicate with anyone?

A. No.

Q. You made no effort to refresh your recollection at all as to what transpired in that period beginning about May 11th?

A. I have been turning a number of these things over in my mind trying to refresh my recollection, but I haven't talked with anyone about it.

Q. You didn't call anyone?

*Tillinghast—Deposition*

A. No.

Q. Mr. Sessel?

A. No.

Q. You weren't surprised at what had been marked Defendants' Exhibit 22, which are the notes from the Bank of America, a telephone conversation presumably made by Mr. Kerr of the Irving Trust? You remember that?

[923] A. Yes.

Q. That did not cause you to inquire of Mr. Sessel whether that was true, or what he meant by it?

A. No.

Q. When was a decision made to refuse to the Tool Company this week's extension, or any extension of time that was being requested through Merrill Lynch?

A. It was made at the board of directors meeting on the 17th, following your appearance at the directors meeting, and the position that you stated there.

Q. Mr. Tillinghast, I don't mean when was a record made of the decision. I am asking you when, in fact, was a decision made by the TWA management.

A. The decision was, in fact, made on the 17th by the board of directors. As I told you yesterday, Mr. Davis, at the time of my discussion with Mr. Forrester, I told Mr. Forrester that I frankly didn't think that it was realistic under the best of circumstances to accomplish this within a week. I didn't think, and he concurred in that, that he or anyone else could give me any assurance that this could be accomplished within a week, and that while it was something that I felt that I would not want to take the responsibility for answering myself, and would want to have my chairman [924] share my decision, I thought in fairness I could only tell him that my recommendation would be that the extension not be granted.

*Tillinghast—Deposition*

I then called Mr. Breech—

Q. When was this?

A. This was on the 12th. I then called Mr. Breech and explained to him the request that had been made, the discussion that had been had, and said that I didn't want to make a decision in the thing without discussing it with him.

He said that he thought this was a matter that the whole board ought to consider, and that neither he nor I should make a decision.

He said, "Let us plan to take it up at the directors meeting."

In the meantime, we authorized counsel to do some preliminary work, so that further time would not be lost if the board decided that we should grant an extension. The matter, however, was not decided until the board meeting on the 17th, after your appearance at the board meeting.

Q. In other words, Mr. Tillinghast, you are quite sure that as chief executive officer of TWA, the decision to deny this request to the Tool Company was not made by [925] TWA until the board meeting of the 17th of May, and it was made at that meeting?

A. That's correct.

Q. You are quite sure of that?

A. I am quite sure of that.

Q. Would there be anyone else at TWA who could make such a decision without your knowing it?

A. I don't believe so, Mr. Davis.

Q. You had not delegated to anyone else the duty or responsibility of making the inquiry or the decision?

A. No, this decision to the extent that it was a decision would have been made either by me or by the board of directors. As I told Mr. Forrester from the beginning, my own recommendation was against it, and I proposed to take

*Tillinghast—Deposition*

that position with the board, but no final decision was made until the board meeting.

[926] Q. I understand that you discussed that conclusion with Mr. Breech on the 12th of May, is that right?

A. Yes, I did.

Q. Did you discuss it with any other director of TWA prior to the 17th?

A. I think I probably, although I can't tell you the exact time or circumstances, discussed it with Mr. Sessel sometime before the 17th.

Q. So you discussed it with Mr. Breech and with Mr. Sessel?

A. Yes.

Q. Do you have a recollection of having discussed that decision or recommendation with anyone else?

A. Well, I certainly discussed it with Mr. Leslie, who was a director.

Q. Do you recall when?

A. Well, he was present on the 12th, and undoubtedly discussed it with him sometime between the 12th and the 17th, I am sure.

Q. Any other director that you can recall?

A. Possibly Mr. Cocke.

Q. Mr. Cocke being an officer. I mean with outside directors primarily.

A. At this time, Mr. Davis, I have no recollection [927] of having discussed it with any of the other outside directors. I won't say that it is impossible that I did, but I have no recollection.

Q. You are aware, are you not, that on the morning of the 17th, there was filed with the SEC an amendment to the registration statement, which contained a reference to the fact that TWA had not consented to the delay?

A. Yes.

*Tillinghast—Deposition*

Q. And that was something which you instructed counsel to do in anticipation of the board action on the 17th, is that correct?

A. Well, I was aware that counsel was doing it, yes.

Q. Were you aware that the statement filed on the morning of the 17th with the SEC contained a statement as to whether or not TWA would or would not grant this delay requested by the Hughes Tool Company?

A. I think at that point the material filed with the SEC just said that we had not agreed to the delay.

Q. So that the language may be clear to you, and without bothering to mark in evidence the public record, let me hand you the registration statement of TWA at that time, and refer you to page 4, so that you may construe the language—at least your understanding of what it means. I think it is the top paragraph, Mr. Tillinghast.

【928】 A. Yes.

Q. You construe that to mean merely that TWA had not agreed to grant the request, but still might?

A. I think it speaks for itself, Mr. Davis, that we had not agreed to grant the request.

Q. But so far as you were concerned, no decision had been made to deny or refuse the request?

A. No decision was made until the meeting of the board, Mr. Davis. As I said before, I knew what my own views on the subject were, and what I proposed to urge upon the directors, but no decision was made until the directors' meeting.

Q. Let me refer you to Defendants' Exhibit 22, which you will note purports to be a note from the Bank of America of a telephone conversation with Mr. Kerr of the Irving Trust, with Mr. Gordon. You will note a portion of this reads: "TWA management and board has declined to give

*Tillinghast—Deposition*

the extension on advice of own investment counsel who say a week won't do."

That was dated May 16th.

Mr. Sonnett: Have you a typed copy of that?

Mr. Davis: No, not of this one.

By Mr. Davis:

Q. Do you see that?

[929] A. Yes.

Q. You see there is no basis whatever for Mr. Kerr or anyone else making such a statement, is there?

A. Mr. Davis, the board hadn't met by this date.

Q. I understand that.

A. I can only assume that Mr. Kerr was predicting what the board was going to do.

Q. You don't think Mr. Kerr was referring to the fact, when Mr. Sessel and Mr. Breech got together, that was a decision?

A. No, I don't think when Mr. Breech and Mr. Sessel got together, that was a decision.

Q. You think when Mr. Breech, Mr. Sessel and you got together, it was a decision?

A. Not in this particular situation.

Mr. Davis: May I have this marked for identification?

(Handwritten notes from Dillon, Read's files, marked Defendants' Exhibit 23 for identification, as of this date.)

Mr. Sonnett: May I read the paragraph you referred to?

Mr. Davis: I am not offering that in evidence now.

*Tillinghast—Deposition*

【930】 Mr. Sonnett: You purported to refer to a paragraph and you incorrectly described the contents of the paragraph. I think the record should describe correctly what the paragraph says.

Mr. Davis: You can read the whole thing into the record. The exhibit will be part of the record, and you have a copy of the document.

Mr. Sonnett: You offered me the opportunity to read it all in the record, and I would like to have it copied. My initial suggestion was to read the one paragraph.

The Special Master: Let us have the one paragraph that the witness was referred to.

Mr. Sonnett: The paragraph reads as follows:

"TWA management and board has declined to give the extension on advice of own investment counsel, who say a week won't do."

By Mr. Davis:

Q. I am going to hand you what has been marked as Defendants' Exhibit 23, Mr. Tillinghast. I represent to you that these are parts of notes that we obtained from the files of Dillon, Read. I believe those to be handwritten notes of Mr. Wadsworth at Dillon, Read. You don't have to be influenced in your answer by reason of 【931】 what you see on this exhibit. The handwriting may be difficult to read without Mr. Wadsworth, but let me read to you the way I read it.

It is dated June 13, 1961, and presumably refers to—I am suggesting it may refer to a telephone conversation between Mr. Wadsworth and Mr. Sessel.

"Sessel—will be faced with decision. Meeting at Hagarty-Haycock, Keehn, Somers, Olds, Breech and

*Tillinghast—Deposition*

Sessel. Ecker for a little while. Will lenders continue to be lenders without voting trust in either old credit or new credit."

"Tillinghast will write short lender to lenders." I think it means short letter.

"Answer is no, except not certain on Bank of America. Tillinghast will come to us and ask us whether we could replace present lenders for \$165 million plus new financing—\$147 million—Boeing."

Then another entry under same date "Attended closing on subordinated debentures."

The next entry dated June 14, 1961 is, "Met with Langmuir, notes attached."

Do you know who Langmuir is?

A. It doesn't mean anything to me.

Q. Perhaps from Prudential?

¶932] A. I don't know.

Q. Then a note under the heading of June 15, 1961, "Talked to Leslie. Reported meeting with Langmuir. He advised us of letter he was writing us, and lenders, re: Ability to finance."

You still don't know who Langmuir is?

A. No, I don't.

Q. That, in fact, related to what transpired when TWA received the offer of the Tool Company reflected by its letter of June 10, 1961?

A. That is correct.

Q. It had nothing to do with the subject under discussion, namely, the refusal to delay?

A. This was a month later.

Q. Now continuing with what took place in May, following the meeting with Dillon, Read and Forrester on Friday,

*Tillinghast—Deposition*

May 12th, did you subsequently receive a written confirmation of the conclusion of that meeting?

A. A written confirmation of the conclusion of the meeting?

Q. Yes.

A. No, not that I would describe as that, Mr. Davis.

Q. What I am referring to is a letter you received from Mr. Brandi. I believe you received it from Mr. [933] Brandi.

A. Oh, yes. Mr. Brandi at my request wrote a letter to have at the board meeting on the 17th.

Mr. Davis: May I have this marked for identification, please?

(Letter dated May 15, 1960 to Mr. Tillinghast from Dillon, Read, marked Defendants' Exhibit 24 for identification, as of this date.)

Mr. Davis: I think I would like to have the record show what has been marked as Defendants' Exhibit 24 was numbered document 88 as part of Defendants' Exhibit 12, as being part of the documents made available to us for the first time on January 31, 1962, which we had never received before.

Mr. Sonnett: If you want to make a point in that connection, I will have to go back and we can have a lot of time wasted to find out whether your statement is correct or not. Apart from the editorial comment, I think you got the piece of paper you have in your hand on January 31st, so you had it for some time. I think the editorial comment only gets us both into colloquy which wastes time and money.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Mr. Tillinghast, let me hand you Defendants' Ex-  
[934] hibit 24, and ask you if you can identify it.

A. Yes, I recognize that letter.

Q. It is a letter you received from Mr. Brandi which referred—confirming the advice they gave you at the meeting of the preceding Friday, namely, May 12th, is that correct?

A. That is correct.

Q. Does this letter accurately confirm the advice that you received on May 12th?

A. It accurately summarizes the advice given orally on the 12th.

Q. Are you now satisfied that in your testimony of yesterday you described all of the reasons given by Dillon, Read for the conclusion reflected by Defendants' Exhibit 24?

A. Repeat that, please.

(The question was read.)

A. Yes.

By Mr. Davis:

Q. And the reasons as so given to you satisfied you?

A. They did.

Q. You did not feel it necessary to inquire of anybody else to see whether or not others might have a different opinion or reach a different conclusion?

[935] A. No, I didn't, Mr. Davis. I was very concerned personally by the things that he mentioned and he confirmed, and saw no need for further investigating the matter.

*Tillinghast—Deposition*

Q. At that time were you aware of the financial arrangements with Dillon, Read?

A. Aware of what financial arrangements with Dillon, Read?

Q. With respect to the fee payable to them, or fees for either 1960 or 1961? Do you have to refer to the memorandum from Mr. Rowe? I am only interested in your independent recollection, Mr. Tillinghast.

A. So far as I can recall at this time, I just can't recall at this time, Mr. Davis, when I first became—let me think here. I know I became aware of the arrangement by the 17th, because I know when you appeared before the board, one of the things you questioned was this fee, and later you sent a telegram, or somebody sent a telegram saying that you wanted to withdraw any objection that you had made to the fee. So I know that by that time I was aware of the amount of the fee.

How much before that I was aware of it, I would hesitate to say now. I probably was aware of it at this time, but I just have no independent recollection of it.

[1936] Q. I am sure you didn't intend to confuse the facts with your last answer, Mr. Tillinghast. I think I know what you are referring to, but for the sake of the record let us see if we can't straighten it out.

The drafts of registration statements filed with the SEC, and the next to the last draft, for the first time contained, as is normal, a description of fees to be incurred?

A. Yes.

Q. And the relationship of the parties?

A. Yes.

Q. And that registration statement disclosed an amount due or payable to Dillon, Read?

A. It is very likely that was when I first learned of the amount.

*Tillinghast—Deposition*

Q. And you were referring to a communication while I was a member of the firm of Simpson, Thacher & Bartlett, to the effect that our various objections to the proposed financing did not relate to the question of fees?

A. That is right.

Q. Do you recall in relationship to this date of May 12th or May 16th when this information came to you about the fee arrangement, the \$750,000 payable in three installments in 1960, and the question as to the amount [937] of fee to be fixed for the 1961 financing?

A. My recollection is that the question of the amount to be fixed as the fee for the 1961 financing came up substantially later than this. So far as the 1960 financing is concerned, I have no independent recollection as to exactly when I first learned about the amount of the fee. I have no mental association that I can recall that fixes that date with respect to the 12th of May.

Q. The first time you heard about it, did you find it shocking, surprising, large, usual, unusual?

A. I thought it was a lot of money.

Q. I understand that, but when you heard about it, did it impress you as being something indicating that something out of the order had happened?

A. I knew, Mr. Davis, that a good deal out of the order had happened. The fee struck me as a very substantial one, a lot of money. As I said before, this was a heritage from the past, and on the basis of the knowledge I had, I had no reason to think it wasn't quite reasonable for the services rendered even though it impressed me as a lot of money you would have to pay.

Q. Did it raise some concern on your part that you might have to pay a comparable amount with respect to [938] the \$147 million then contemplated to be planned

*Tillinghast—Deposition*

through the same lending institutions, through the same Dillon, Read?

A. I certainly hoped and expected that we were not talking about \$750,000 for the subsequent financing, which turned out to be the case.

Q. On May 12th you telephoned Mr. Breech and reported what had transpired?

A. That is correct.

Q. Do you have a clear recollection of that telephone conversation?

A. I have a recollection of one part of it, and that was his saying that he or I should not take the responsibility for deciding this, and it was of sufficient importance that it ought to be decided by the board.

Q. You reported to him the approach made by Merrill Lynch?

A. That is correct.

Q. At that time he heard of it from some other quarters, or were you giving him the information for the first time?

A. I think this was the first he had heard of it, Mr. Davis.

Q. And you told him that you had a meeting with—

[939] A. Mr. Forrester.

Q. That morning?

A. It was in the afternoon.

Q. The meeting on the 12th was in the afternoon?

A. I am sure it was in the afternoon.

Q. And this telephone call to Mr. Breech was in the evening?

A. No.

Q. Right after the meeting?

A. My recollection is that it was right after the Forrester meeting.

*Tillinghast—Deposition*

Q. After they left?

A. Yes. I may be wrong on that, but I know it might even have been the next day, but I know following the meeting I tried to get in touch with him as soon as I could, to explain the situation to him.

Q. Do you recall whether or not there were other people in the room when you were talking to Mr. Breech and explaining to him what happened?

A. I have no recollection of other people in the room at the time, Mr. Davis.

Q. Did Mr. Breech show some interest at what you were telling him?

A. He was obviously interested in it.

[940] Q. Do you recall what Mr. Breech said and what you said to him?

A. I recall this much. I recall that I went through an explanation of the request, the discussion with Brandi, the meeting with Forrester, summarizing what was said in those discussions. I said I felt very strongly that it would be a mistake to get started on a program that very likely would lead from postponement to postponement.

Q. You told him that?

A. I did. That my own experience told me that it was very unrealistic to expect to do something like this within a week's time, and that if we granted a week's delay, that I was morally certain that we would at the end of the week be faced with the question of a further delay. And I felt that we ought to deny the request but I didn't want to do so without discussing it with him and getting his concurrence.

If I recall what he said, he said, "Charlie, this is one that neither you nor I should decide. We better put this before the whole board."

*Tillinghast—Deposition*

Q. When you said to him that based on your own experience a week was not sufficiently long, what experience were you referring to?

A. Such limited experience as I had had with registration statements.

[941] Q. You had had experience with registration statements?

A. Limited experience, yes.

Q. Was it your understanding at that time that the same registration statement that had been prepared by TWA would be used?

A. With such modifications as were necessitated by bringing in a new party.

Q. Did you understand why Merrill Lynch wanted a week's time?

A. I know what they said.

Q. What did they say?

A. They said they wanted a week's time in order to permit them to put together an underwriting syndicate, and to make the necessary changes in the registration statement in order to effect a public offering.

Q. Were you familiar with putting together an underwriting syndicate?

A. Not directly.

Q. Indirectly?

A. I guess limited.

Q. Would you describe your experience in putting together an underwriting syndicate?

[942] A. It is hearsay, Mr. Davis. I never actually engaged directly in putting one together. I have been on the fringes enough to have some idea.

Q. Describe as well as you can what indirect experience you have had in putting together an underwriting syndicate?

*Tillinghast—Deposition*

A. I was quite active in the distribution by General Motors of the Bendix stock which General Motors sold, as I recall it, in the first part of 1947. During the time I was at Hughes, Hubbard, there were a good many offerings around the office that I didn't directly participate in, but got some impressions about.

In 1950 something or other—I don't remember when—I represented the underwriters in an offering of the stock of the Edo Corporation, and was active in that.

I know enough about it—I don't represent myself as an expert in this field. I know you have to have underwriting agreements, and you have to give information to the underwriters on the company, and you have to give an opportunity to the underwriters that are interested to investigate the company. You have to have meetings.

Q. Isn't it true that all that work, the investigation of the company, material to be disclosed to the [943] public—all that work had been done by Dillon, Read and the Chadbourn firm, for the public offering by TWA, had it not?

A. A certain amount of that had been done.

Q. Merely a certain amount of it?

A. May I finish?

Q. Yes, certainly. I was quite aware of the fact that if you brought in new underwriters, the discharge of their responsibility would require them to make at least a casual investigation of the company. I can't believe that a firm of the standing of Merrill Lynch would make an offering without taking some steps to familiarize themselves with the company, the company's future, the company's problems. They would bring in new counsel who would have to go over the registration statement, educate himself sufficiently to be in a position to pass the registration statement on behalf of his client.

*Tillinghast—Deposition*

It would bring in Hughes Tool Company as an active party, and Hughes Tool Company, as it turned out on the 17th, had many serious questions about the adequacy of the registration statement.

By the time that you had gotten a new set of counsel in for the underwriters, by the time you had [944] gotten Hughes Tool Company counsel in, no one in this world could convince me there was a reasonable prospect of getting that offering off the boards and ready to go public in a week's time.

Indeed, I said as much to Mr. Forrester, and particularly to Mr. Hager, his counsel, and Mr. Hager, in substance agreed with me, and I said, "What sort of a guarantee can you gentlemen give me that this can be accomplished within a week's time?"

They said, in substance, "Obviously we can't give you any guarantee. All we can say is we will do our best."

- [945] Q. When you refer to a week's time, you are not quite accurate, are you? We are talking about a request made on May 11th. They were seeking a week's adjournment from the contemplated May 17th, so it was two weeks' time, wasn't it?

A. No, it wasn't two weeks' time. I was talking with them on the 12th of May, which was a Friday, and the proposal was to become effective on the 24th, which was 12 days later.

Q. 12 business days?

A. No, not 12 business days.

Q. 12 days?

A. 12 days including Saturday and Sunday.

Q. Do you think that is closer to two weeks, or one week?

*Tillinghast—Deposition*

A. That is 12 days. I will say, Mr. Davis, unless there be any confusion on the subject, that what I say is to the impossibility of accomplishing this, in my opinion, applies equally to 12 days as it does to one week.

Q. Will you admit that you have had no experience really, or you don't consider yourself to be an expert as to how long it takes to get together an underwriting group, leaving aside for the moment—

**[946]** Mr. Sonnett: I object to that as to form. It is argumentative. The witness has fully described his experience.

The Special Master: I think he already said he isn't an expert.

By Mr. Davis:

Q. In connection with this request to Merrill Lynch, you were not concerned with the problems that Merrill Lynch might encounter in achieving their objective, were you? I will withdraw the question.

Did you consider Merrill Lynch was being adequately advised by experienced people, legal people, so that they fully understood what they were proposing to do? Were you satisfied about that?

A. Yes.

Q. Did Merrill Lynch say to you that they thought that they could put together an underwriting group if TWA, or its management, would delay the effective date of their registration statement from the 17th to the 24th? Did they say that to you?

A. They might well have.

Q. Did they or didn't they, Mr. Tillinghast?

A. I wouldn't put it exactly that way, but let me say this, that there was no real question in my mind **[947]**

*Tillinghast—Deposition*

to their ability to get together an underwriting group. That wasn't the problem. The problem was the problem of becoming effective.

Q. You mean how much longer it would take to become effective if they got together an underwriting group?

A. That's correct. The problem that I was interested in, Mr. Davis, was not how long it took them to get together an underwriting group. I was concerned with the question of if we granted this delay, when we would become effective.

Q. And you thought that if they formed an underwriting group, it might delay beyond the 24th the effective date of the registration statement?

A. I felt if we tried to go to an underwriting on this, that the probability was that it would delay it far beyond the 24th.

Q. Did you try to make an estimate as to how much of a delay you thought would occur?

A. I thought that under the best of circumstances, that you were talking about, roughly, a month.

Q. Did anyone tell you that?

A. I discussed that with our own counsel. I discussed it—

Q. How do you mean by your own counsel?

[948] A. Mr. Rowe. I discussed it with Mr. Brandi. I discussed it with Mr. Forrester and Mr. Hager, and expressed that viewpoint.

Q. This was on the 12th?

A. On the 12th. None of the experts in this field seriously disputed that expression of viewpoint by me.

Q. In other words, you are saying now that on the 12th of May, Mr. Forrester and Mr. Hager, of Sherman Sterling, agreed with the views which you expressed out loud, that it would take an additional month in order to become effective?

*Tillinghast—Deposition*

A. Let me say, Mr. Davis, to be more accurate, that they did not disagree with that expression of viewpoint by me.

Q. You assumed from that they were in accord with your point of view?

A. I did. As I said before, Mr. Davis, they repeated—Mr. Forrester repeated they would do their best. They were hopeful that they might succeed in doing it, but certainly couldn't assure us that it was possible.

Q. Was it as a result of this meeting that a group was formed, included Mr. Reed, who was at that meeting, wasn't he?

A. He was.

【949】 Q. Mr. Reed and Mr. Hager of Sherman, Sterling, to get up a lot of papers from the Tool Company, requesting the Tool Company to give a firm letter of commitment to Merrill Lynch, preparing resolutions, and they worked an entire weekend over it! You were aware of that, weren't you?

A. I was. I believe it was after the meeting that someone said would we be willing to have the lawyers work over the weekend in order to make such progress as they could, so that if the decision was an affirmative one, no time would be lost.

I authorized them to go ahead and start working.

Q. In fact the Hughes, Hubbard firm sent bills to TWA and others with respect to the work that was done to get the Tool Company committed to Merrill Lynch, following this meeting on the 12th?

A. I wouldn't say worked to get the Tool Company committed to Merrill Lynch, but they did work over this weekend, and I believe—

Q. Doing what—do you know?

*Tillinghast—Deposition*

A. Working on an underwriting agreement, and they worked on a letter of commitment that the Tool Company would give. Just what else they worked on, I don't know.

【950】 Q. Do you recall a discussion about trying to get the Tool Company to agree to guarantee one year's interest on these debentures?

A. Yes, I do. That came up on the 12th. Mr. Forrester said at that time that one of the problems that they had run into was that it very likely would be necessary for someone to guarantee the interest for a year, in order to make these publicly favorable.

Q. The meeting on the 12th, with Mr. Forrester and the others there, broke up on the basis of all this work to be done, these problems to be solved, get the Tool Company to consider guaranteeing a year's interest, an underwriting agreement to be worked on—that was what everybody started to do upon the break-up of this meeting?

A. No, it was not. If I recall correctly, that did not come up at the meeting. It came up after the meeting, and I got a telephone call, I believe from Mr. Reed, saying that they wanted to go ahead so that there wouldn't be any waste of time, and I told him in effect that so long as it doesn't involve expense on the part of TWA, and as long as it is clearly understood what my position is in the thing, go ahead and extend every cooperation, and see what progress you can make.

【951】 Q. Did Hughes, Hubbard in fact send a bill to TWA for the legal work that they did during that period?

A. I think they sent one to the Tool Company, didn't they?

Q. I know they did, but I am asking you if they also sent one to TWA.

A. Not for the work. I think this was all paid for by the Tool Company, Mr. Davis.

*Tillinghast—Deposition*

Q. And it is your understanding that following that meeting, they worked on a proposed underwriting agreement between the Tool Company and Merrill Lynch?

A. Yes.

Q. Do you recall saying that before anything else would happen, you would want to see a firm letter of commitment from the Tool Company to Merrill Lynch?

A. Offhand I don't, no.

Q. Have you ever heard that Merrill Lynch was ever asked to obtain from the Tool Company a firm irrevocable letter of commitment?

A. Not that I recall, Mr. Davis. I remember that there was some sort of a commitment letter, and there was question as to the adequacy of the commitment letter, but I don't recall that TWA asked for that. As I recall it, it was volunteered by the Tool Company.

【952】 Q. Without drawing a distinction who TWA is, do you know of any individual, whatever association he may have with anyone, who asked Merrill Lynch to obtain such a firm letter of commitment from the Tool Company?

A. Not offhand, Mr. Davis. I don't recall it at this point.

Q. Is it still your testimony that on May 12th, at this meeting you indicated, and it was your personal opinion, that the whole thing was absolutely impossible, and it was just a waste of time?

A. That's correct.

Q. And it is your testimony that you believed that Mr. Forrester and Mr. Hager understood that point of view, and did not disagree with it?

A. Yes, although I would have to say in fairness that they obviously wanted to go ahead with this thing, and let us say with viewing it in the most optimistic light from that

*Tillinghast—Deposition*

standpoint. I specifically put the question to them as to whether or not they could give me any assurance that this would be completed in the time suggested, and the answer was no, they couldn't.

Q. Was there any discussion at that meeting as to what the Tool Company would do with all that money, with all that cash?

【953】 A. No, there was not, at least I am sure there was no question as to what the Tool Company would do with that money.

Q. Then you called Mr. Breech and expressed your own personal view that this request of the Tool Company was not feasible, is that correct?

A. That's right.

Q. What else do you remember telling Mr. Breech?

A. I have already testified—

Q. Excuse me for interrupting you. Did Mr. Breech express any personal views based upon his experience as to whether or not this would be feasible or not?

A. Not that I recall. He certainly didn't disagree with what I said. I don't recall at this moment his having expressed any independent opinion on the feasibility of it or not.

Q. Would you say that Mr. Breech had had more experience than you as to the problems of feasibility of forming an underwriting group, or the length of time it takes to carry out that kind of a project?

A. I would think he had had considerably less experience than I.

Q. In that telephone conversation, would you say you did most of the talking or did Mr. Breech do a substantial  
【954】 amount of the talking?

*Tillinghast—Deposition*

A. I am not sure those are alternatives. I did most of the talking, and Mr. Breech did a substantial amount of talking.

Q. Did you tell Mr. Breech what Mr. Leslie had discussed with you on May 11th?

A. If I did, I don't recall it at this moment. I don't think so.

Q. Mr. Tillinghast, isn't it true that at that time at least there was a great deal of interest on your part as to what the Tool Company was trying to do? Are you saying that you did not discuss that, or express some views or report to Mr. Breech along these lines?

A. No, I am not saying that, Mr. Davis. I certainly was concerned very much with whether or not this request was genuine, or whether it was a maneuver.

Q. What kind of a maneuver?

A. A delaying maneuver.

Q. For what purpose?

A. For the purpose of upsetting the Boeing financing.

Q. Not for the purpose of raising \$100 million?

A. Not for the purpose of raising \$100 million.

Q. Not because of any concern because without that money the voting trust might terminate?

■955■ A. That's correct.

Q. And that is what you told Mr. Breech?

A. I told Mr. Breech that I was very concerned that this was a delaying tactic, that if we become involved in this, that questions would arise, that the thing would go from delay to delay, and we would find ourselves up against a deadline without our subordinate debenture financing complete.

Q. Did Mr. Breech give you any reasons why he thought this was a matter that should be acted upon by the board?

*Tillinghast—Deposition*

A. I don't remember any specific reasons, but it was of an obvious importance that one might well take that point of view, and indeed I didn't disagree with it.

Q. At this point, Mr. Tillinghast, I am more interested in what Mr. Breech actually said, than your reasoning. I know you have many justifications for what took place. I am interested in what happened.

A. As best as I can recall it at this time, Mr. Davis, what happened was that Mr. Breech said that he thought this was something of a magnitude that neither he nor I nor the both of us together ought to decide it, and it ought to be decided by the board.

Q. Based upon a recommendation made by you, or to be [956] made by you and him?

A. He didn't go into that, that I can recall.

Q. Did he indicate that he agreed with your reasoning and conclusions?

A. He certainly didn't disagree with them. My recollection, so far as I can recall it, Mr. Davis, is that he was generally in agreement with what I had to say, but didn't want to take the responsibility of deciding it.

Q. Mr. Tillinghast, there was a purpose in your calling Mr. Breech, wasn't there? Wasn't it for the purpose of gossiping?

A. No. The purpose of calling him was for the obvious purpose of acquainting him with this development, because I thought (1) that I should not handle it by myself.

Q. So you wanted his advice! You wanted him to help in making a decision, didn't you?

A. That's correct.

Q. I am trying to find out what Mr. Breech said to you that helped you to make a decision.

*Tillinghast—Deposition*

A. He didn't say anything to me to help me make a decision, other than that he and I should not make the decision, that it should be taken to the board.

Q. I believe you said that you expressed to Mr. [957] Breech your views that this was part of a maneuver by the Tool Company to interfere with the Boeing program, is that correct?

A. That's correct.

Q. On that date on May 12th, what evidence had you had, what reasons did you have to believe that the Tool Company was interested or desired or wished to interfere with the Boeing purchase program?

A. Well, I really had none directly, Mr. Davis, because up until this particular time there had been no indication one way or the other as to what viewpoint the Tool Company would take on this matter. Based on my conversations with Mr. Leslie, and as I mentioned before, the fact that I didn't consider this a realistic proposal, a durable project, I was suspicious—I became suspicious as to whether or not this was a genuine proposal, or whether it was a diversion. My suspicions undoubtedly were more readily aroused by such knowledge as I had of the delays and attempted delays and diversions that had taken place in connection with the 1960 financing, and the general reputation that Mr. Hughes had, as I understood it, of being one at the last minute to seek a delay, and to prevent things from coming to a conclusion.

[958] This matter of the offering of the subordinate debentures had been something that had been on the fire for many months.

Q. Pursuant to an agreement with the Tool Company?

A. Pursuant to the agreement embodied in the 1960 financing.

Q. With the Tool Company?

*Tillinghast—Deposition*

A. With the Tool Company and others. Obviously one of the questions in my mind was the question of why had Hughes waited until the 11th hour to suggest something like this, if in fact it was a genuine proposal, and from what Mr. Leslie had said, from the lateness that this question had been raised, from what I had heard about Mr. Hughes' negotiating tactics, I was suspicious that this might not be genuine, and indeed, on the 17th when you appeared, my suspicions were richly fulfilled.

Q. Thank you, Mr. Tillinghast. At that time what was the market price of the TWA common stock?

A. I don't remember exactly. It was higher than it is now, as I recall it.

Q. Substantially so. Was it around 22?

A. No, it was 19 or 20, or somewhere in there.

Q. Had you had discussions with Dillon, Read, as to the probable offering price of these convertible [959] debentures?

A. Yes. There had been discussions.

Q. What were the nature of those discussions, without the detail? I am interested in what they said to you with respect to the probable offering price.

A. Well, I am not sure that I had direct discussions with Dillon, Read at that point. I think most of my discussions were with Mr. Leslie. It was hoped—I have got to refresh my recollection and think about this.

Q. Would you like to take a short recess?

A. Let me finish this answer first. We were talking. I believe at that time half a point higher.

Q. Than what?

A. Than the price finally fixed, if I recall correctly, in the delay that took place, we lost half a point in the conversion price.

*Tillinghast—Deposition*

Q. You are referring to the period between May 17th and the day it actually became effective. I am talking about May 12th. What was the price you were discussing with Dillon, Read on or about May 12th, or prior to May 17th?

A. I think it was half a point higher than the conversion price ultimately fixed.

【960】 Q. And that was what figure?

A. It was 20½ and 21½.

Q. That was the conversion price?

A. Yes.

Q. What was the offering price of the debentures? Actually wasn't it an offering debenture with warrants?

A. Yes. There wasn't an offering price. It was an offering to the shareholders.

Q. Weren't the shareholders given an opportunity to subscribe to subordinated debentures?

A. Yes.

Q. With warrants?

A. With warrants attached.

Q. The warrants gave you the right to convert, or turn in the debenture for stock?

A. That's right.

Q. But the stockholders were going to be given the opportunity of buying a debenture?

A. Right.

Q. Was this financing something that you didn't pay any particular amount of attention to?

A. I wouldn't say I didn't pay any particular attention to. It was one of many, many things I was dealing with at the time, and it was something that had started in motion long before I got there. Mr. Leslie was carrying 【961】 the responsibility on it. I was generally familiar with it, but I was not deeply involved in it.

*Tillinghast—Deposition*

Q. Would it be fair to say that you as chief executive officer of TWA wasn't paying too much attention to this whole program?

Mr. Sonnett: I think that is repetitive and argumentative. I object to it on that ground.

The Special Master: I think the witness' answer has shown how much attention he paid to it, unless you have something further.

Q. Can you tell us, Mr. Tillinghast, what this offering consisted of?

A. Yes. It consisted of \$100 million of subordinate debentures.

Q. At what price?

A. At par.

Q. The offering price was going to be par, is that correct?

A. Par.

The Special Master: We will have a five-minute recess.

(Short recess taken.)

By Mr. Davis:

Q. Am I correct that Defendants' Exhibit 24, which is [962] a letter from Dillon, Read, dated May 15th, referring to the meeting Friday, was received by you because you requested such a letter?

A. That's correct.

Q. Do you recall when you requested the letter?

A. No, I don't, Mr. Davis. It might either have been on the 12th or on Monday. I can't recall at this point.

Q. Did you have any subsequent meetings with Mr. Forrester, or his counsel after this meeting on the 12th?

*Tillinghast—Deposition*

A. Yes. If you call it a meeting. I think it was probably the 16th. It was either the 15th or 16th. Mr. Forrester and Mr. Fredley, of Sherman, Sterling, showed up without prior appointment, and as I recall—

【963】 Q. Showed up where?

A. At 380 Madison Avenue. As I recall, I was in the process of going from a meeting that was just finishing in my office down to something else in the conference room, and I spoke to them just briefly, standing outside of my office, where my secretary sits, and apologized for being pressed so that I couldn't sit down and talk with them.

They handed me a letter summarizing, as I recall it, what they wanted to accomplish.

Q. There was no discussion with them at all?

A. Very limited, almost none at all, because I was just running from one meeting to another.

Q. Mr. Breech was there?

A. He was not there, no.

Q. Mr. Breech was in town?

A. Mr. Breech was in town.

Q. When did he come to town?

A. I notice here that on the 15th I have a note that says "Breech in town." Which would be in accordance with his normal custom, so I imagine he came in the late afternoon or evening of the 15th.

Q. At that time did you have a further discussion or conference of what had transpired on the 11th or 【964】 the 12th?

A. Mr. Davis, I have no specific recollection. The probabilities are that I did, but I can't at this point tell you certainly that I did, and where we had the meeting.

Q. Are you quite certain it was not Mr. Breech who suggested that you ought to get a letter from Mr. Brand confirming the position to be taken?

*Tillinghast—Deposition*

A. I can't be absolutely positive. I don't think so, Mr. Davis. If I recall correctly, that was my own idea.

Q. Do you know if Mr. Breech had any discussions or conversations with anyone else—any director, Dillon, Read, or Mr. Sessel of the Irving Trust, or anyone else—relating to this maneuver by the Tool Company?

A. There are none that I can recall, Mr. Davis.

Q. Have you ever heard that he did have such conversation or conversations with anyone?

A. Not that I can recall at the moment.

Q. Was there also a meeting in the evening of the 16th with Mr. Forrester and Mr. Eaton?

A. With me?

Q. That you know of, relating to this matter—with [965] anyone?

A. I am sure there wasn't a meeting with me, Mr. Davis. Conceivably he may have met and talked with the lawyers who were working on this.

Q. Do you mean Mr. Reed or Mr. Rowe?

A. My recollection is they were both involved in it.

Q. Did Mr. Reed undertake to keep you informed as to what was going on in connection with his activities with Merrill Lynch and Sherman, Sterling?

A. I knew he was actively working on it.

Q. I understand that, but my question is, did he report to you or keep you informed of what was developing?

A. I think he did generally, yes.

Q. What did he tell you?

A. Well, I recall, and I can place this exactly, but I recall there was a question of directors' indemnification, and there were two or three open questions on this proposed Hughes Tool agreement.

Q. Will you explain what you mean by "questions about directors' indemnification"?

*Tillinghast—Deposition*

A. I think one of the questions, if I recall correctly, that was involved in the discussions with [966] Hughes Tool was the extent to which Hughes Tool would indemnify the directors of TWA for any liability by reason of this offering by Hughes Tool Company.

Q. And you discussed that with Mr. Reed?

A. I believe I did, yes.

Q. What was the result of that discussion?

A. My position was that we ought to get every indemnity position. Let us say it was generally in accordance with the customs of the trade.

Q. Mr. Reed is counsel for the two voting trustees—the two outside voting trustees?

A. That's right.

Q. And Mr. Breech came to town on Monday the 15th?

A. That's correct.

Q. Do you know to what extent Mr. Reed discussed with Mr. Breech this matter?

A. I don't have a specific recollection, Mr. Davis, but I am quite sure that Mr. Reed must have discussed it at some length with Mr. Breech.

Q. But not in your presence?

A. I just can't be sure. It is entirely possible, although I have no independent recollection of it now, that on the evening of the 15th, the three of us may [967] have had dinner together.

Q. And discussed this matter?

A. That is quite possible, yes, but I have no independent recollection of it.

Q. Whether it was exactly that evening or another time, do you remember the discussion when sitting with Mr. Breech and Mr. Reed, maybe fairly casually, speculating as to what the Tool Company was up to?

*Tillinghast—Deposition*

A. I have no independent recollection, Mr. Davis. It is entirely likely that we did, but I would be misleading you if I said I could specifically recall such a discussion.

Q. And is it your testimony that on the 16th it was the only other meeting that you had of any significance with Mr. Forrester or Sherman, Sterling?

A. I am quite sure that was the only meeting I had with them, Mr. Davis.

Q. And that was when you were going from your office to the conference room?

A. That's right.

Q. You just met them in the hall?

A. That's right.

Q. And then handed you a piece of paper?

A. That's correct.

[968] Q. And you were on your way to a conference?

A. That's correct.

Q. Can you tell us what that piece of paper was that they handed you?

A. As I recall it, it was an outline—if I saw it, I am sure I would recognize it—an outline of their proposal for this offering, and I believe it had attached to it a copy of a draft of the Hughes Tool Company agreement, and perhaps it also had a Hughes Tool Company resolution.

Q. A corporate resolution?

A. A corporate resolution.

Q. I sat up all night and the night before to get it.

A. So be it.

Q. What conference was it you were going to with this piece of paper in your hand?

A. At this point I can't remember.

Q. It had nothing to do with this at all?

A. No. Mr. Davis, I am sure you appreciate this was shortly after I had come to TWA. I had a million things

*Tillinghast—Deposition*

that I was trying to digest, and some things stick in my mind, and many things do not.

Q. This was late in the afternoon, or fairly late?

■969] A. I guess 3:30 or 4:00, or somewhere in there.

Q. Then what did you do with this piece of paper and attachments?

A. I took them with me and presented that to the board meeting.

Q. The next day?

A. I am not sure whether it was the board meeting the next day or two days later.

Q. We have been referring to a board meeting on the 17th?

A. That's right. I am not absolutely sure whether this was the 15th or the 16th that they were there.

Q. You kept this piece of paper in your pocket for the one day or two days until the board meeting?

A. Yes. One of the letters that you wrote refers to this by correct date but incorrectly says that Mr. Breech was there, because it wasn't a meeting with him. It was just a quick handshake in my outer office.

Q. I understand that part of it, Mr. Tillinghast. What I am trying to establish is, this document with attachments that Mr. Forrester of Merrill Lynch, and Mr. Eaton of Sherman, Sterling handed you on the 15th or 16th; did you put it in your pocket and keep it until the board meeting on the 17th?

■970] A. I kept it until the board meeting. Whether I put it in my pocket or put it with some other papers that I had with me, I just couldn't recall.

Q. And you presented that to the board on the 17th?

A. Yes.

Q. You didn't discuss it with anyone in between?

*Tillinghast—Deposition*

A. I wouldn't say that I didn't discuss it with Mr. Reed. It is quite possible that I did, because this was the material he was working on.

Q. Wasn't this an important piece of paper that you had to consider in connection with your recommendation to the board on the 17th?

A. As I recall it, except with respect to the matter of the nature of the commitments that the Tool Company was making, there was nothing particularly new about it.

Q. You mean so far as you were concerned, a decision had been made?

A. No. So far as I was concerned, I had reached a conclusion.

Q. Which you had reached on the 12th?

A. Which I had reached on the 12th. This did not really add or subtract anything significant to the picture as I saw it.

[971] Q. You read it pretty carefully, didn't you?

A. I am sure I read it carefully.

Q. But you didn't consult anyone about it?

A. I didn't say that. I am quite certain, although I can't tell you when and where, that I discussed it with Mr. Reed.

Q. Let me show you Defendants' Exhibit 3—would you like to consult with your counsel?

Mr. Sonnett: I have a message I want to give him while you are marking something.

Mr. Davis: I never have any objection, where you think, if it would help you to give me a complete answer, to consult with your counsel.

Mr. Sonnett: I waited until you finished your question and answer, and you were about to mark an exhibit. It has nothing to do with your question.

Mr. Davis: I have no objection.

*Tillinghast—Deposition*

Mr. Sonnett: I didn't want it to appear on the record that you had some profound or puzzling question.

Mr. Davis: There is nothing personal in it. In a deposition I always like to get all the facts, and any time a person wants to consult, [972] whether it be their lawyer or someone else, I have no objection. I want Mr. Tillinghast to understand that.

Mr. Sonnett: That is very generous of you, and I will follow the same practice when you examine Mr. Hughes. If you want to mark the document—

Mr. Davis: I have no document to mark.

Mr. Sonnett: Go ahead.

By Mr. Davis:

Q. Referring to Defendants' Exhibit 3, Mr. Tillinghast, which is a diary, which I believe was kept by your secretary, and which I hand you, I refer you to the entry on Tuesday, May 16th, indicating that at 5:00 o'clock, the stock option committee met in Suite 36H of the Waldorf, the Irving Trust suite, and indicating that those who attended or might have attended were Hood, Leithead, Sessel, yourself, and Mr. Breech, with a question mark.

Does that help refresh your recollection as to what was going on on the late afternoon of May 16th?

A. Yes. Mr. Davis, I would have to say—I don't have a very distinct independent recollection, but I am quite sure that what this was was a meeting of the [973] stock option committee, and I believe that the record would show that at the directors' meeting of the 17th, a whole series of stock options were confirmed by the board. I am quite sure this was a meeting that we had the night before, or the afternoon before, consisting of those people, and I believe Mr. Breech was also in attendance, although he was not a member of the stock option committee—at which we went over the whole stock option program.

*Tillinghast—Deposition*

I had made recommendations—I hesitate here, because I can't be certain at this point whether this was a meeting at which we had a preliminary discussion of general amounts and approaches to the stock option problem, or whether this was the meeting—whether this was the time they were actually granted. They were granted either in May or June. I am inclined to think that it was in May, but I do have a recollection of a preliminary discussion where we discussed the broad principles to be followed but didn't actually award stock options.

Q. That meeting was held, wasn't it, on May 16th?

A. I am quite sure there was a meeting.

Q. You attended it?

A. I attended it.

[974] Q. And Mr. Breech was there?

A. I think in all probability he was, yes. Yes, I am quite sure he would be, because he was in town, and if there had been such a meeting, he would have been there, I am quite sure.

Q. It also indicates that a number of the directors were in town then on the 16th, doesn't it?

A. Those who were there.

Q. Do you know if others also came into town on the 16th?

A. I am sure that having a meeting on the 17th, that several had been in town the night before.

Q. Do you know to what extent Mr. Breech on the 16th discussed with individual directors, particularly the outside directors, the action to be taken on the 17th, or any matter that would come up on the 17th?

A. No, I don't, Mr. Davis. My recollection is that Mr. Breech was in the office that afternoon, but that I was involved in some meetings, and didn't see him or talk with him during the main body of the afternoon.

*Tillinghast—Deposition*

Q. Referring you to Exhibit 22 again, you will note that purports to be notes of a telephone conversation between Mr. Kerr and Mr. Gordon. You will note the time there is 8:06 a.m.

¶975] A. Yes.

Q. At that time of the year, what was the time differential between the West Coast, California, where Mr. Gordon is, and New York—do you know?

A. It is three hours, isn't it?

Q. If it is on Daylight Time, it might be four.

A. Isn't it always three hours?

Q. That would indicate that the call from New York, that would have been about 11:00 o'clock that day?

A. Yes.

Q. Does that refresh your recollection in any way that by 11:00 o'clock of that day the management and the directors of TWA made a decision?

A. No, it does not, Mr. Davis, and I am quite sure that that wasn't the case. Mr. Breech has a 1 William Street meeting on that day, and I am quite sure that he was at 1 William Street—at the 1 William Street meeting all morning.

Q. Do you know whether or not he stopped in to see Mr. Sessel that day?

A. I just would have no knowledge of that. I would doubt it, but I just don't really know.

Q. You think Mr. Kerr was wrong, if these notes are correct?

¶976] A. I think Mr. Kerr obviously was anticipating something that hadn't happened.

Q. You have no idea as to how Mr. Kerr could have anticipated this action?

A. No, I would just be speculating.

*Tillinghast—Deposition*

Q. And then, on the 17th, at the board, you made your recommendation; is that correct?

A. That's correct.

Q. Did Mr. Breech make a recommendation also?

A. Well, he certainly joined in mine.

Q. Do you remember how he did it?

A. My best recollection is, Mr. Davis, that this came up after you had appeared at the meeting and made a rather lengthy statement, and that the matter was then taken up.

My recollection is that I repeated my views on the subject, expressed the viewpoint that if we started getting into postponements, that I thought that there might well be no end of the road, and I thought that the Boeing program was so important to TWA's future, that we ought to proceed with the Boeing program and avoid doing anything that might have the effect of unhinging it.

Q. That is what you said?

[977] A. That is what I said.

Q. What did Mr. Breech say—the same thing? Did he say, "I agree with everything Mr. Tillinghast said"?

A. The only thing I can recall Mr. Breech saying was, "After all, Mr. Hughes has had months to do this. If he really wanted to do it, I don't feel we should feel under any compulsion at this late date to upset a program that the management of TWA is anxious to effect in order to accommodate a last-minute change of heart, if that is what in fact it is."

Q. And the program which the management of TWA was anxious to effect was which program?

A. The Boeing program.

Q. Did you or Mr. Breech explain to those directors the connection between this offering of subordinate debentures and this Boeing program?

*Tillinghast—Deposition*

A. I explained, and the letter from Mr. Brandi was read, that I didn't feel any assurance that if we failed to meet the deadline on the subordinate debentures, that we wouldn't get into technical arguments and postponements that might have the effect of causing our financing to fall apart, and in view of the importance and magnitude of the program, I thought the thing that ought to take precedence over everything [978] else was to make certain that we did nothing that might involve any reasonable possibility of upsetting the program.

Q. Were any of the directors there present who asked any questions?

A. There was a lengthy discussion.

Q. How long a discussion?

A. My best recollection is, Mr. Davis, that this went on for three-quarters of an hour or so. I would hesitate to say exactly, but that is my present recollection.

Q. Let us see if we can establish some facts here, Mr. Tillinghast.

When did the board meet—what time in the morning?

A. At 9:30.

Q. This discussion and consideration was after the presentation which I made; is that correct?

A. That's correct.

Q. Was there some business taken up before I was invited to appear at the board meeting?

A. I believe there were just some routine things, like approval of minutes taken up.

Q. When would you say I was invited to appear [979] before the meeting—around 10:00 o'clock?

A. My guess would be around 10:00 o'clock, yes, sir.

Q. Do you think the presentation I made was a fairly lengthy one?

*Tillinghast—Deposition*

A. I think it took about an hour.  
Q. An hour? As much as that?  
A. That would be my recollection. Maybe that is too much.

Q. That would bring us up to 11:00 o'clock?  
A. Let us say a quarter to eleven or eleven, yes.  
Q. And then there was some discussion among the directors to decide what to do; is that right?

A. Yes.

Q. Do you know at what time the signal was given for Mr. Rowe to file the amendment before the SEC?

A. I know Mr. Rowe was laboring under a pressure of time.

Q. Isn't it a fact that at 11:00 o'clock he went to make a telephone call to his colleague at Washington, to file the price amendment? Mr. Rowe is right here, you know.

A. Yes, I know he is here.

It is possible, although that wouldn't make [980] things happen faster than I thought they did.

Q. Would you like to confer with Mr. Rowe, that he made that telephone call just before 11:00 o'clock?

Mr. Sonnett: I object to that. I think we ought to go ahead with this witness.

The Special Master: I think you can get all the knowledge the witness has, and if he doesn't recall anything of that kind, he can say so, and that will be in the record.

By Mr. Davis:

Q. Isn't it a fact, Mr. Tillinghast, at that board meeting you were told by your counsel that the price amendment had to be voted by the board, and the time was noted on the minutes when the price amendment—

*Tillinghast—Deposition*

A. I recall there was a question of time, and that Mr. Rowe had to make a telephone call. That he in fact did make a telephone call. Whether it was 11:00 o'clock or 11:30 I wouldn't be sure. The minutes of the meeting, I am sure, would show it. My recollection is that the meeting commenced, and just about the first thing of any substance we did was to have you come in. You talked at some length. I think I recall that your discussions were perhaps drawn [980A] to a conclusion so that we could meet this deadline, whatever it was.

[981] (Discussion off the record.)

A. The answer is I was wrong in my recollection. What happened was that before you entered the meeting, Mr. Davis, that there was a general outline and discussion of the matter, and that some of the things which I said I thought had taken place after you left, in fact had taken place before you came into the meeting.

By Mr. Davis:

Q. Let us start at the beginning. You don't have the first page. Let me say that the meeting did meet at 9:30.

A. I believe that was the time the meeting began.

Q. And normally the first action of the board is to approve the minutes of the prior meeting?

A. That is correct.

Q. And then the next subject was a discussion of the proposed offering of subordinated debentures?

A. That is correct.

Q. At that time Mr. Rowe, counsel for the corporation, made some presentation as to the registration statement, and what was needed in connection with it?

A. Yes, although I don't recall there was much with respect to the registration statement itself. I think [982]

*Tillinghast—Deposition*

it was mainly with respect to the question raised by Mr. Forrester's request.

Q. And then in fact, Mr. Holliday was present, and advised the meeting that the Hughes Tool Company had retained Simpson, Thacher & Bartlett?

A. That is correct.

Q. And asked if Mr. Davis of that firm would be invited to the meeting for the purpose of discussing the financing plan?

A. Before that there had been some discussion of the request of Merrill Lynch, and I had made the recommendation, which I testified to before, that it not be acceded to. Mr. Breech had made his comment, which I alluded to, that he thought there had been a lot of time to do this, and there was no point—

Q. I want to follow what happened at that meeting. It is very important to me. With the minutes there to help you to refresh your recollection, is it a fact that after Mr. Rowe suggested, or made some remarks with respect to the registration statement, Mr. Holliday made some remarks with respect to the retention of Simpson, Thacher & Bartlett and asking Mr. Davis be invited?

A. That's right.

Q. The next thing that happened—I am asking you for [383] your own independent recollection now—because you have got the minutes there to refresh you, but if you think something happened that the minutes don't fairly reflect, I want you to say so.

A. All right.

Q. The next thing that happened was that the chairman—that is Mr. Breech, is that correct?

A. Yes.

*Tillinghast—Deposition*

Q. He said that before acting on the request of inviting Mr. Davis to the meeting, the meeting should be informed of any recent developments relating to the subject?

A. Right.

Q. That is what happened, isn't it?

A. That is correct.

Q. And then Mr. Rowe advised the meeting—Mr. Rowe sitting here, of the Chadbourne firm?

A. That is correct.

Q. And he is the one who then described to the meeting that a request had been made on May 11th to postpone the offering of the debentures for one week?

A. That is correct.

Q. Will you read that paragraph of the minutes, and let me ask you whether or not that fairly summarizes the [984] description made by Mr. Rowe?

A. It is a condensation of it.

Q. It took a little bit longer than that?

A. In substance it is correct, as I recall it.

Q. Mr. Rowe said, he stated "A number of meetings had been held with representatives of Merrill Lynch Fenner & Smith, who were proposing to attempt to arrange such an underwriting."

What number of meetings was he referring to?

A. I think he was referring to the meeting we had with Mr. Forrester, about which I have testified, and several meetings that had been held between Friday and the following Wednesday, between the lawyers, to accomplish as much as they could while this thing was awaiting decision.

Q. Let me see if I understand you, Mr. Tillinghast. There was a meeting on May 12th?

A. That is correct.

Q. At which you concluded that the whole thing was wholly unrealistic and unfeasible, is that correct?

*Tillinghast—Deposition*

Mr. Sonnett: If counsel will not characterize the testimony. We have covered the May 12th meeting three or four times, I think.

By Mr. Davis:

[985] Q. I want to understand what the testimony is. You then asked Mr. Brandi for a letter, either on the 12th, but anyway you got one dated the 15th?

A. That is correct.

Q. And after that, the only meeting you were aware of was the one, this passing meeting, when you were going from your office to some conference?

A. That is not correct, Mr. Davis. The only meeting that I am aware of in which I participated was that. I know there were a series of meetings going on between the lawyers.

Q. You mean Mr. Rowe and Mr. Reed?

A. Mr. Rowe and Mr. Reed, and people representing the underwriters, and representing Hughes Tool Company.

Q. Was it your understanding those were serious meetings to work out and develop a practical plan?

Mr. Sonnett: I object to the form of that question. It is argumentative. The witness has testified in detail as to his understanding of what the lawyers were doing and why they were doing it. This is just argument.

The Special Master: I think it is a reasonable inquiry. He may answer the question.

A. The purpose of that meeting, Mr. Davis, or those [986] meetings, and the activity of the lawyers, was to make certain that if the board should have a different feeling than I had, that no time would have been lost by reason of the passage of days between Friday and Wednesday.

*Tillinghast—Deposition*

By Mr. Davis:

Q. And then, referring you back to the minutes of that meeting, you, Mr. Tillinghast, reported further on meetings and other discussions with representatives of Merrill Lynch Pierce Fenner & Beane, and Hughes Tool Company on this subject. Do you see that?

A. Yes, I do.

Q. What reports and meetings of other discussions do these minutes refer to?

A. The only thing that I reported on—the only meeting that I had—and let me say I don't recall any discussion with any representative of Hughes Tool Company relative to this.

Q. You think the minutes are in error in that respect?

A. So far as I can recall now, they are, Mr. Davis.

Q. Do you know who prepared these minutes?

A. Mr. Duckworth.

Q. Do you know whether or not he prepared them with [987] the aid and assistance of Mr. Rowe?

A. I think Mr. Rowe reviews them, yes. I review them also.

Q. And Mr. Duckworth was present at the meeting?

A. Mr. Duckworth was at the meeting.

Q. And Mr. Rowe was at the meeting?

A. Mr. Rowe was at the meeting.

Q. Mr. Reed was not at the meeting?

A. Yes, he was there part of the meeting.

Q. And Mr. Duckworth had not been aware of what had been transpiring with respect to these discussions with Merrill Lynch prior to what he heard at the meeting, is that right?

A. That is generally correct, yes.

*Tillinghast—Deposition*

Q. Is it your testimony now that in your opinion Mr. Duckworth just misunderstood the nature and scope of your report when he made these notes?

A. I would have to say so, because I don't have any recollection of any meetings with Hughes Tool Company. It is barely possible that Mr. Holliday and I talked briefly about this, but I have no recollection of it at the moment, Mr. Davis.

Mr. Holliday, perhaps would remember whether we did. My present recollection is that I talked only [988] with Merrill Lynch on the two occasions that I mentioned.

Q. Is it customary for Mr. Duckworth to make notes at the meetings themselves, from which he subsequently prepares the minutes?

A. I presume so, yes. I am quite sure he does.

Q. I am interested in the procedure that is followed in the preparation of these minutes, Mr. Tillinghast. Then are these first put in draft form?

A. Yes, he ordinarily circulates a draft.

Q. And that draft is circulated among whom?

A. Well, I see it and Mr. Rowe sees it, and insofar as I know, that is every one who sees it.

Q. And it is not unusual for some corrections to be made by either you or Mr. Rowe?

A. I think that is quite common.

Q. And then you return the drafts with your comments to Mr. Duckworth?

A. I do.

Q. And then he puts the minutes in final form?

A. That is correct.

Q. And then they are mailed out to the individual directors?

A. That is correct.

*Tillinghast—Deposition*

Q. Prior to the next meeting?

【989】 A. Usually prior. Sometimes he doesn't get the job done until just at the time of the meeting, but he is supposed to have them out in advance of the meeting.

Q. And at the following meeting the minutes are read and the directors are asked if they want to approve the minutes as read?

A. No, the minutes are not normally read. Normally they have been distributed to the directors, and they are not read at the meeting.

Q. Does it ever happen that the directors point out some errors in the minutes of a prior meeting, and suggests that they be corrected?

A. I think there have been some suggested corrections, yes.

Q. Do you have any recollection that any different procedure was followed in connection with the minutes of the meeting of May 17, 1961?

A. I do not.

Q. Will you now tell us to the best of your recollection the nature of the reports that you made to the directors at this meeting of May 17th?

A. Except for being refreshed that I reported on this before you came into the meeting, rather than after you came into the meeting, I would think my testimony already 【990】 given, was correct.

Q. You understood, did you, that at that time the board was meeting with a possibility they might have a different point of view than the one you shared, is that right?

A. That is correct.

Q. Are you now testifying that you made a full presentation of all aspects of the problem?

*Tillinghast—Deposition*

A. I made a presentation which, with what Mr. Rowe had already said, I thought adequately outlined the problem.

Q. Are you now testifying that what you did in effect was substantially endorsed by what Mr. Rowe, the counsel, had said to the board.

A. He had explained certain portions of this, and I elaborated on what he said.

Q. I would like to know now what it was that you explained, Mr. Tillinghast, because while I believe the record does disclose what your views and opinions were on May 12th, subsequent to that time you had an opportunity to look at this piece of paper that was handed to you on the 16th, and you had the benefit of meeting with, perhaps informally, some other directors, and now I would like you to testify as accurately as you can the [991] report that you made to those directors, and the explanation that you gave as to what was being proposed, and the views and recommendations of the management, and the reasons for those views and recommendations, to the best of your recollection.

Mr. Sonnett: Mr. Rankin, I am under the impression that the witness testified previously and set forth what he could recall as to what he said to the board of directors, and that the witness has just said that except for when he said it, his prior testimony sets forth fully his recollection.

I think this, therefore, is repetitive and wasting time.

The Special Master: I am not clear from the record just what the witness finds in conflict with his testimony in the minutes.

*Tillinghast—Deposition*

Mr. Sonnett: Only that what he said to the board, he said before Mr. Davis was invited in, rather than his earlier testimony that he thought it was after Mr. Davis made his presentation.

The Special Master: What is this about the Tool Company meetings that he questions whether the minutes accurately reflects?

A. I have no recollection at this time of any meeting with the Tool Company, or any Tool Company representative pertaining to this. [992]

The Special Master: Do the minutes purport to say that you so reported?

The Witness: They do.

The Special Master: That you did have such meetings?

The Witness: Yes, it says I reported further on meetings and other discussions with representatives of Merrill Lynch Fenner & Smith and Hughes Tool Company on this subject. Literally, this doesn't say that they were meetings that I had with Hughes Tool Company, although one conceivably could infer that.

My testimony is that I cannot recall having had any meetings with representatives of Hughes Tool Company, if that is what the minutes purport to state.

The Special Master: I think at this point the parties are entitled to determine exactly what the witness said to the board of directors in regard to this matter so that we can have it in one place.

The Witness: I would merely have to repeat what I said before, which is that I discussed my discussions with Mr. Forrester, explained—

*Tillinghast—Deposition*

The Special Master: Can you describe in substance what you said, and anything that anybody else said, so that we can get something more than just discussions?

The Witness: Mr. Rankin, I am afraid that I would be somewhat misleading if I purported to be quoting what one person said and what another person said, because it is not that clear in my mind.

The only thing I can say is that as I recall it, I mentioned that I had met with Mr. Forrester and Mr. Rowe and Mr. Reed and Mr. Joy, and Mr. Hagarty, and Mr. Leslie, and that they had outlined their proposal. That I said to them that I was extremely doubtful that such a program was possible of accomplishment. That I did not think it was realistic, and from what limited experience I had had in the securities field told me that it would be quite impossible to bring two new parties into a financing, and with a week's delay resolve all the problems that might arise in getting out a registration statement, and getting all the problems solved so that everyone was in agreement.

I said that I thought that the Boeing program and its accomplishment was of great importance to TWA, and that I was concerned as to whether this [994] embarking on such a program as was suggested would lead to anything other than delays, and that I was afraid we might get into a situation where we missed our date of May 31st, which was the deadline for the offering of the subordinated debentures, and also the deadline for meeting the financing requirements of the Boeing program, and I thought it would be a great mistake to run any risk in trying to do

*Tillinghast—Deposition*

what seemed to me very unlikely of accomplishment—any risk of interfering with our settling of the financing of the Boeing deal.

I said that I had told Mr. Forrester very frankly that that was my point of view. That none of the people present had been willing to give me or express any opinion. That one could with assurance accomplish this within the postponement requested, and in my mind, it would be an unwise thing for TWA to do.

Q. And that, you feel, was the complete statement of what you reported to the board?

A. As far as I can recall it today.

Q. Following the minutes which read "He also read to the directors a letter from Dillon, Read & Co. concerning the effect of a delay in the offering of the [995] debentures." That is Defendants' Exhibit 24!

A. That is right.

Q. You read that in its entirety—this letter?

A. I believe that was read in its entirety. I should have added to my testimony that I said that I had felt that I should consult with Dillon, Read as to the possible effect on our financing, and obtain their opinion as to whether or not the fears I had were substantial, or were groundless, and at my request they prepared a letter summarizing their views.

Q. At that point do you recall any of the directors asking questions or for explanations, either based upon the Dillon, Read letter, or the statement that you had made? Did everybody remain quiet?

A. No. I am sure there was a discussion. I believe I recall Mr. Slack entering into the discussion.

Q. Do you recall what he said?

*Tillinghast—Deposition*

A. I don't have any recollection of anyone having quarreled with the position or seriously questioned the position I took on the matter of delay.

Q. Would you say that the directors there predicated acquiescence in what you said?

A. Yes. The attitude was one of general agreement.

Q. And then, referring to the minutes, Mr. Tilling-  
[996] hast then read also to the meeting a letter dated May 16, 1961, from Merrill Lynch Pierce Fenner & Smith outlining the proposal for their underwriting, the interest of Hughes Tool Company in the proposed offering of subordinate debentures.

Did you do that?

A. Yes.

Q. That was the letter you had received the previous day, which had these attachments?

A. That is correct.

Q. Did you read the entire letter to the board?

A. I read the letter. I don't believe I read all the attachments.

Q. Then Mr. Breech made some comments—turn to page 3. The next paragraph refers to the recommendation you made, which I assume you have described, isn't that right?

A. Yes.

Q. Then Mr. Breech commented on the lateness of the proposal by Hughes Tool Company, and suggested the alternative or secondary offering of the debentures by the Hughes Tool Company, and offered the cooperation of the corporation in such an offering. Do you remember that?  
[997]

A. Yes.

Q. Did Mr. Breech comment at some length on his views?

*Tillinghast—Deposition*

A. I don't think I can add anything to what I have already testified.

Q. I am trying to understand to what extent Mr. Breech made any comments?

A. I already testified to that.

Q. Were they lengthy comments?

A. No, I don't think they were lengthy.

Q. They were brief?

A. They were relatively brief.

Q. Did he in effect say "I agree with Mr. Tillinghast, and I don't think we ought to grant this request of the Tool Company"?

A. I don't recall his having said specifically "I agree with Mr. Tillinghast."

My recollection is rather he sort of picked up where I left off, and said "After all, Mr. Hughes has had months to decide to do this if he wanted to. This thing has been pending for quite a period of time, and I think that he can, if he is sincerely interested in a distribution of his interest, that he can do it by means of a secondary offering, and it is not necessary to postpone [998] TWA's offering for that purpose."

Q. You referred to Mr. Slack who had formerly been counsel for the Hughes Tool Company?

A. Yes.

Q. Do you recall if he made any remarks based upon his prior experience with the Tool Company or Mr. Hughes?

A. My recollection is that he said this was a fairly typical Hughes maneuver.

Q. What maneuver was he talking about? Did he indicate to the board the maneuver involved?

A. I don't recall he elaborated it.

*Tillinghast—Deposition*

Q. But everybody understood it?

A. Everybody understood what he meant.

Q. And then you will note at 10 o'clock Mr. Davis was invited to attend the meeting?

A. Yes.

Q. All you described took place between 9:39 and 10 o'clock?

A. That is right.

The Special Master: We will adjourn until 2 o'clock.

(Whereupon, at 12:45 p.m., the hearing adjourned until 2:00 p.m.)

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**[999] AFTERNOON SESSION**

2:00 P.M.

The Special Master: Are you ready to proceed?

Charles C. Tillinghast, Jr., resumed the stand and testified further as follows:

*Examination (cont'd) by Mr. Davis:*

Q. Is it your testimony that the decision of the board was made during this period from 9:30 to 10 o'clock?

A. No, it is not. The decision of the board was made after you left.

Mr. Davis: I don't know exactly how or why it happened, that we have not received copies of the complete minutes of the board of directors from January 1, 1961 to the date of the request. It may

*Tillinghast—Deposition*

be through a misunderstanding or confusion that took place.

I understand that we were furnished with excerpts of certain minutes, and it may have been that there was a confusion as to whether we were requesting excerpts from the minutes or the minutes themselves of the meetings which were clipped when we went over the documents.

In any event, may I now request TWA furnish [1000] us as soon as possible with a photostatic copy of the minutes of the meetings of the board of directors or meetings of the committees of the board of directors for 1961, including any reports or documents which were annexed as part of the minutes, or which were presented to the meeting of the board involved.

The Witness: Mr. Holliday gets all of the minutes of the board.

Mr. Davis: It may be, but if he has received them as a director, they are not presently available to the Tool Company. What Mr. Holliday has done with the minutes he received, I do not know. It may very well be, that as you know, Mr. Holliday spends a great deal of time traveling, and I am not sure that all were received by him.

It would facilitate and expedite our efforts to discover the facts if it would not be too much of an inconvenience to TWA to make that material available to us. I can also make an appropriate motion.

The Witness: Let me say for TWA that this has been made available to you. If by any chance any of it hasn't been made available to you, it will [1001] readily be made available to you.

\* \* \* \*

*Tillinghast—Deposition*

【1069】 Q. I understand your prior testimony to be that the actual decision by the board to reject the request of the Tool Company was not made until after I appeared before the board at 10 o'clock, is that correct?

A. That is correct, yes.

Q. Do you have the minutes of that meeting before you?

A. I have an excerpt from the minutes of that meeting before me.

Q. You mean the first page is missing?

A. I don't know just how much is missing.

Q. The pages are numbered. Do you see the page number at the top of the page? Yours starts with page 2?

A. Yes.

Q. Let me show you my copy. Do you see that the first page is missing? Do you satisfy yourself as to that, Mr. Tillinghast?

A. Yes.

Q. You have page 2?

A. It starts with page 2.

Q. And you have page 3?

A. Page 3.

Q. You have got page 4?

A. Page 4.

【1070】 Q. And 5?

A. And 5.

Q. And 6?

A. And 6.

Q. And 7?

A. No.

Q. It stops at page 6?

A. Yes.

Q. You see that Mr. Davis left the meeting at 10:45?

A. Yes.

*Tillinghast—Deposition*

Q. That appears at page 4!

A. Yes.

Q. Do you have any doubts that the minutes correctly reflect when Mr. Davis left the meeting?

A. No, that would accord roughly with my recollection as to how long you were there.

Q. At this point Mr. Reed, counsel for the voting trustees, entered the meeting, isn't that correct?

A. Yes.

Q. That is what the minutes reflect?

A. That is correct.

Q. That is in accordance with your recollection?

A. That is in accordance with my recollection.

■1071] Q. He was apprised of the discussions held on the subject of the financing with particular reference to Mr. Davis' comments?

A. That is correct.

Q. He was brought up to date for the comments that were held from 10 to 10:45?

A. Yes.

Q. The minutes read, "At this point Mr. Francis C. Reed, counsel for the voting trustees, entered the meeting, and was apprised of the discussions held on the subject of the financing with particular reference to Mr. Davis' comments."

A. Correct.

Q. That is in accordance with your recollection?

A. That is correct.

Q. Then the minutes read "After further discussion, it was moved, seconded, and carried that the corporation should decline the request set forth in the letter of May 16, 1961 from Merrill Lynch Pierce Fenner & Smith, for a postponement."

*Tillinghast—Deposition*

Do you see that paragraph?

A. Yes.

Q. After 10:45, Mr. Reed came into the meeting, is that correct?

[1072] A. That is correct.

Q. And someone—do you recall who—purported to bring him up to date as to what had transpired from 9:30 to 10:45?

A. Yes. At this point I don't have any distinct recollection as to who summarized what had transpired before then.

Q. Then following bringing Mr. Reed up to date, a motion was made denying the request of Merrill Lynch, isn't that right?

A. That is correct.

Q. It was acted upon?

A. It was acted upon.

Q. Look at the minutes at the bottom of page 4—Mr. Holliday advised the meeting that on the advice of counsel he would not accept the responsibilities as a director for the statements in the prospectus, and withdrew the power of attorney previously given by him authorizing others to sign amendments to the registration statements as his agent. That took place, did it?

A. Yes.

Q. After that at the top of page 5, "After full discussion, upon motion duly made and seconded, the following resolutions were adopted, Mr. Holliday opposed."

[1073] A. Yes.

Q. There appears four resolutions relating to fixing the price as to which the debentures were to be offered?

A. Yes.

*Tillinghast—Deposition*

Q. That was after a full discussion as to the price?

A. I don't believe there was very much discussion as to price.

Q. The statement appearing in the minutes, "After full discussion," does not accurately describe what took place?

A. I didn't say that. I said I don't recall that there was any extensive discussion as to price.

Q. There was some discussion?

A. Certainly the price was stated. My recollection is it was discussed.

Q. At the meeting?

A. At the meeting.

Q. By the directors?

A. The price was explained to the directors. I do not recall that the price was the subject of extensive discussion.

Q. Do you recall who made the presentation with regard to the price?

A. I believe Mr. Rowe did.

Q. How long do you think he spoke on that subject?

A. I would guess that the whole matter of price occupied a minute or two.

Q. Were the actual resolutions read in toto?

A. The resolutions were before the meeting. I do not recall they were read in toto. I think each director had a copy of the resolutions.

Q. Are you quite sure of that?

A. No, I would not say I am quite sure of it. I think that was the case. I would be surprised if it wasn't.

Q. On page 6, "Mr. Holliday requested that the time of the adoption of the foregoing resolutions be recorded as 11:02 a.m."

A. Correct.

Q. Is that a correct statement of the minutes?

A. I think it is certainly substantially correct.

*Tillinghast—Deposition*

Q. Whoever made it recorded it as 11:02 a.m."?

A. I am sure if Mr. Holliday had been badly off when he made this request, that somebody would have argued with him, so I presume 11:02 is substantially correct.

Q. Isn't that what Mr. Duckworth did, to record the [1075] time as 11:02?

A. It says Mr. Holliday requested that the time of the adoption of the foregoing resolutions be recorded as 11:02 a.m.

Q. Then the next sentence, "Mr. Rowe temporarily left the meeting at 11:02 a.m. to direct that amendment No. 4 to the registration statement be filed immediately with the Securities and Exchange Commission"?

A. That is correct.

Q. You have no doubt these minutes correctly reflect what happened?

A. I have no doubt.

Q. Between 10:45, when Mr. Davis left the meeting, and 11:02, first Mr. Reed was brought up to date as to what had happened?

A. Right.

Q. Then there was a discussion with respect to the request of Merrill Lynch for an extension of time?

A. Right.

Q. Then Mr. Holliday made some statement with respect to withdrawing his power of attorney?

A. Right.

Q. And then there was a full discussion or some discussion of the price amendment?

[1076] A. Right.

Q. And all that took place between 10:45 and 11:02?

A. I believe that is correct.

Q. Now will you please tell me what the discussion was that took place, and what was said to the directors there

*Tillinghast—Deposition*

present relating to the action to be taken on the request of Merrill Lynch for an extension of time?

A. My recollection is that after you had left, and after the situation had been summarized by Mr. Reed, someone made a motion, I think myself, that the request of Merrill Lynch Pierce Fenner & Smith be respectfully denied, and that we express our readiness to cooperate in every way in a secondary offer.

Q. Therefore at that time there was no further discussion of the merits or lack of merits of the request?

A. As I recall it, there was some more discussion and some more comment on the thing, all of which, as I recall it, were to the point that it didn't seem to be of any interest to TWA to grant this request.

Q. Do you recall who made what comments? Did you make some further comments?

A. I don't at this point remember any specific comments, but I am quite sure there were some, Mr. Davis.

Q. Isn't it a fair statement, Mr. Tillinghast, that [1077] the deliberations, or to the extent to which there were deliberations, as to this decision to be made by the board at that meeting, took place between 9:30 and 10 o'clock, and that after my presentation it was really a matter of a formality of someone making a motion and denying the request?

A. The burden of the discussion certainly took place before. I think, Mr. Davis, that it would be only fair to say that your appearance there, and the things that you said, did a great deal, I think, to solidify the opinion of the directors that this request ought not be granted.

Q. Can you identify the things that were said during the 45 minutes that I was at the meeting, which you have characterized as solidifying the conclusion or the feelings of the board?

*Tillinghast—Deposition*

A. Yes, Mr. Davis. I don't know to what extent you want me to go through the whole discussion, as I recall it.

Q. Just answer the question, if you can.

Mr. Davis: Will you read the question back to the witness?

(The question was read.)

A. Yes, Mr. Davis. You stated in effect several [1078] times that unless TWA was prepared to acquiesce in the request of Merrill Lynch in this event as a business matter, your client was prepared to waive the objections of Hughes Tool to our registration statement. That you proposed to oppose the effectiveness of the registration on the ground that the registration statement was incomplete and improper, and you went through quite a list of specific matters with which you took issue.

Q. Isn't it a fact, Mr. Tillinghast, that a portion of that 45 minutes was devoted to my explaining that the Tool Company was confronted with the necessity of either stating its position with respect to the 990 program, and other related matters, and that if a registration statement went to the public, particularly if it was to be used in connection with a secondary offering, in fact, the Hughes Tool Company would have lost the right to thereafter assert any claims in that regard? Isn't that the substance of what took place?

A. That is not entirely correct, because I do not recall, and do not think that you said anything about if it is to be used in connection with a secondary offering.

Q. The purpose was to urge the directors to give favorable consideration to the request of Merrill Lynch, [1079] was it not?

*Tillinghast—Deposition*

A. That is right. What I understood you to say was that if we were prepared to give favorable consideration to Merrill Lynch, you would forget about the inadequacies of the registration statement, and that was a business decision your client was proposing to make, but if we weren't prepared to do that you had no choice but to bring to the attention of the Securities and Exchange Commission, what you considered to be a number of inadequacies in the registration statement.

Q. Do you recall what those inadequacies were that were presented by me at that meeting?

A. I remember some of them. You are quite correct in stating that you said initially that Hughes Tool Company was faced with a problem, that if it maintained silence it might be deemed to have waived or acquiesced in certain things, and then you went on, as best I can recall at this time, to say that you felt that the registration statement was deficient in not pointing out the voting trust might be terminated, otherwise in accordance with its terms, and you were presently studying, and not in a position yet to give an opinion as to its invalidity of the voting trust as a consequence of certain circumstances of its creation.

【1080】 You talked about my employment contract. I think you said that you thought that the registration statement was deficient in not having pointed out facts relative to prior connections that I may have had with the financial institutions.

You talked about the 990s, and said the registration statement was deficient in its failure to contain a statement as to whether or not we proposed to claim that we were entitled to the 990s, and you also said, if I recall correctly, that it was deficient in failing to state whether there was any obligation on the part of TWA to take the 990s, and you

*Tillinghast—Deposition*

said you were studying that question, and hadn't yet formed an opinion.

You also talked about the fact that maybe Hughes Tool Company would be considered an underwriter. I believe you also stated that you felt that the registration statement should say something about the financial institutions being controlling persons.

At the moment that is as much as I can recall of the specific objections you mentioned.

【1081】 Q. And those are the remarks which solidified the opinion or conclusion of the board, is that correct?

A. No, Mr. Davis, it wasn't those particular remarks so much as I think it was the remarks that preceded them, when you appeared at the meeting and said that there were two subjects that you wanted to talk about. One was the matter of the Merrill Lynch proposal, and the other was another matter which you were not at liberty to disclose until the first matter had been disposed of. That you had given a commitment to Merrill Lynch that you wouldn't raise the second question until the first one had been dealt with.

As I recall it, you talked in that vein for a couple of minutes, and I believe both Mr. Slack and I separately said "Why don't you come to the point and tell us what it is. You assume to be threatening us with something. Now, let us get it out on the table."

At that point my recollection is that after having said again you had told Merrill Lynch that you wouldn't get into this second matter until the first matter was disposed of, you said, "Well, all right, here is what the problem is."

I got the impression, as indeed I think did most of the other people there, and this became clearer as you 【1082】 left, that we were being threatened with the fact that either

*Tillinghast—Deposition*

we went along with the Merrill Lynch proposal, or you were going to raise trouble with our registration.

Q. To see if I can sharpen your recollection a little, Mr. Tillinghast—as you have testified, when I came in I indicated that there were two matters I wished to discuss?

A. That's correct.

Q. The first one was whether or not the Merrill Lynch request for an extension of time was to be granted or not?

A. That's correct.

Q. And I inquired whether or not a decision had yet been made?

A. That's correct.

Q. Do you recall the answer that was given as to whether a decision had yet been made?

A. The answer was given that a decision had not yet been made.

Q. That's right. Then I in effect said that that created a problem to me?

A. You continue.

Q. Do you recall my advising the board that the Tool Company had committed itself to Merrill Lynch to proceed [1083] with a secondary offering, and had furnished Merrill Lynch with a document to that effect?

A. Yes.

Q. And if the Merrill Lynch request was granted, the Tool Company was prepared to waive asserting certain claims which it felt it had, or possibly might have in connection with the matters you have described—the voting trust, et cetera?

A. My recollection with respect to this latter part is that you did not get to the point of stating the dilemma of Hughes Tool Company, and their willingness to waive their objections to the registration statement, until after you had talked for some time with respect to the proposed un-

*Tillinghast—Deposition*

derwriting, and had at least twice stated that you couldn't deal with the second matter until the first one had been disposed of, because you had assured Merrill Lynch that you would not do so.

Q. And the second matter being the objections which the Tool Company had to the registration statement?

A. That's right.

Q. And that the nature of those objections of the Tool Company would obviously be affected by whether or not it was going to participate in the secondary offering?

【1084】 A. That's correct.

Q. I recall prior testimony to be that in your telephone conversation with Mr. Breech, Mr. Breech in substance indicated to you that this request of Merrill Lynch was a matter which should be decided by the board, and not by you or by him, is that correct?

A. That's correct.

Q. This was the board meeting at which the decision was to be made?

A. That's correct.

Q. There had been no decision made on the day before?

A. There had been no decision made the day before.

Q. And in that half hour between 9:30 and 10:00, before I appeared in the room, is when there was that discussion?

A. That's correct.

Q. That is, after taking care of the preliminary formalities of the meeting, and the description of the offering?

A. Yes.

Q. Are you satisfied that you have fully and completely and adequately described the nature of the discussion and consideration that was given by these directors, particularly the outside directors, with respect to 【1085】 this request of the Tool Company?

*Tillinghast—Deposition*

A. As far as I can specifically recollect, Mr. Davis, as developed earlier in the day, we had the day before, in the late afternoon, a meeting of the Audit and Compensation Committee, to deal with the matter of granting options under the stock option plan. I would be surprised with that many directors present if there weren't some discussion of it at that time.

However, I have no specific recollection of any discussion of it at the meeting, and I mention this merely to say that I think the directors who were there very likely got some of the background on the thing before the meeting the next day. So far as any decision being made, I am quite sure that there was none.

Q. Most of those outside directors had become directors after the 1960 financing, isn't that correct?

A. There were only two. Yes, there were three outside —excuse me. The answer is yes.

Q. And those were directors, therefore, who were unfamiliar with the nature of this commitment between the Tool Company and TWA with respect to this offering to be made of subordinated debentures, isn't that correct?

A. I think they were broadly and generally familiar with it. I don't believe they were familiar with the [1086] details of it, except in the case of Mr. Sessel, who undoubtedly was quite familiar with it.

Q. Did you describe or explain to those directors that after all TWA was not going to realize any financing, any new money as a result of this new offering?

A. I doubt very much that I said that.

Q. Did you say anything which conceivably might have been construed or interpreted by the directors present that this offering was primarily for the benefit of the Hughes Tool Company?

*Tillinghast—Deposition*

A. I doubt that I said that. Possibly I might have, but I really doubt it.

Q. Did you explain or say anything to those directors present that might have been construed by them as an indication that this deadline of May 31st was a deadline in the agreement between the Tool Company and TWA?

A. I don't believe I stated it exactly that way, although I know that I discussed with some people—I don't think with directors at this time—I think it was with the people at the time we had the meetings on the 12th, the question of just what the effect might be if we missed the date, and whether or not we would get into a technical controversy over the effect of failing to do this before the 31st.

■1087] Q. Did either Mr. Breech or Mr. Rowe, or anyone else present at that meeting, attempt to explain to the directors there present the matter indicated by my last two or three questions?

A. What time are you speaking of?

Q. At that board meeting—to those directors who were there to meet and act upon this question.

A. I don't recall it.

Q. Did you or Mr. Breech or anyone else there present make any statements to the effect that the granting of this extension of time would adversely affect the financing of the Boeing program?

A. Oh, yes.

Q. You said that, did you?

A. Yes, and I have already testified to it several times.

Q. Mr. Breech said that too, did he?

A. I don't remember Mr. Breech having said that. I am sure I said it. That was the burden of my position, and I had the letter from Mr. Brandi dealing with that subject.

Q. Did you explain to them how and why it would interfere with the financing of the Boeings?

*Tillinghast—Deposition*

A. It wasn't the question of how it would interfere.  
[1088] Q. How it would, or why?

A. How it might interfere.

Q. Did you describe to them how it might interfere?

A. I did.

Q. In any way other than what you have testified to?

A. No, as I testified to here.

Q. Did you say anything at all with respect to what possible advantage there might be to TWA to grant this request of the Tool Company, or of Merrill Lynch on its behalf?

A. Yes. We discussed the question of the possibility of realizing another \$11-½ million out of it, and felt that on the terms on which it was available, that it wasn't a sufficiently attractive inducement to warrant taking this risk.

Q. Did you point out to those directors that the Merrill Lynch proposal would in effect give TWA an underwriting for some \$11-½ million worth of debentures at no cost to TWA?

A. No. I believe you stated that, and that, I believe, was in the Merrill Lynch letter. That was quite clearly understood.

Q. That would have given TWA an additional \$11-½ million of equity moneys?

[1089] A. Not equity moneys.

Q. The subordinated debentures?

A. Subordinated debentures.

Q. Income debentures?

A. Income debentures—6-½ per cent debentures.

Q. At no cost to TWA in raising this additional money?

A. That's right.

Q. And it also provided a guarantee by the Tool Company of one additional year's interest on all these income

*Tillinghast—Deposition*

debentures, including those that would go to the public? Did you explain that to them also?

A. That was clear. Again, that was in the Merrill Lynch proposal.

Q. It is not quite clear to me to the extent to which you had read the Merrill Lynch letter in its entirety to the board. Do you recall whether you read it in its entirety?

A. I believe the covering letter was read in its entirety.

Q. I am interested in the letter or documents handed to you the preceding day, which described the proposal itself. Did you read that out at length?

A. You mean with all the attachments?

¶1090 Q. What did you do, Mr. Tillinghast?

A. I have testified several times that my recollection is that I read the Merrill Lynch letter, but not the attachments.

Q. What did the attachments consist of?

A. The attachments consisted of, as I recall it, a resolution of the board of directors of the Hughes Tool Company and Merrill Lynch.

Q. And is it your testimony that there was a rather full discussion of the advantage and disadvantage to TWA with this proposal?

A. There was the discussion that I have already described, Mr. Davis.

Q. As chief executive officer of TWA, is it your testimony that it was a full and complete or adequate discussion, from your point of view?

A. From my point of view as chief executive officer, it was an adequate discussion.

Q. I believe you also testified that you read to the board the Dillon, Read letter of May 15th, which is Defendants' Exhibit 24?

*Tillinghast—Deposition*

- A. That's right.  
Q. You read that in full?  
A. I believe so, yes.
- 【1091】 Q. I notice the sentence at the end of the third paragraph which reads:

"We do not believe that the inducement offered would adequately compensate TWA for the risk entailed in this delay."

There was no representative of Dillon, Read present at the meeting, was there?

- A. No.  
Q. Did you describe to the board what Dillon, Read meant by the inducement offered?  
A. I don't know that I discussed it specifically as such. I think that it was obvious that they were talking about the cost or expense of underwriting the additional \$11- $\frac{1}{2}$  million of debentures.

Q. Do you now recall whether any directors asked a question "What inducement is Dillon, Read talking about?"

- A. I have no recollection that anyone did.  
Q. I notice in that same paragraph the statement "We confirm to you that after consideration of the facts, we have advised you that we believe a postponement of the offering would not be in the best interest of TWA, because it might well have a detrimental effect on the completion of the \$147 million in financing necessary to purchase new equipment."

- 【1092】 A. That's correct.  
Q. Did any director ask you to explain what Dillon, Read meant by that statement?  
A. Not that I recall.

*Tillinghast—Deposition*

Q. Do you now recall giving any more detailed explanation as to the meaning of that sentence, other than what you have already testified to?

A. No.

Q. As I understand your testimony, this was Dillon, Read's first approach to this problem—presented to them on Friday, May 12th, and this was a letter dated May 15th, over the weekend. Did you indicate to the directors that Dillon, Read reached that conclusion after, at best, a hasty consideration of the problem?

A. I am quite sure I told the directors that I had talked with Mr. Brandi on Friday, and asked him to confirm this, which he had done subsequent to that date.

¶1093 Q. My question to you is whether or not you called to the attention of those directors that the question had been put to Dillon, Read on Friday, and that this was a letter dated the following Monday.

A. I didn't specifically call that to their attention, I am quite sure. I should say, Mr. Davis, just to keep the record straight, that I believe this question was first put to Dillon, Read by Mr. Leslie the day before, when Mr. Brandi visited me in my office—that was not the first time, I am quite sure, that he had heard of the matter.

Q. Did you or anyone else at the meeting indicate that the lending institutions had been contacted to get some reaction or point of view or feeling as to how they would feel towards proceeding with the then contemplated Boeing financing?

A. Not that I recall, Mr. Davis. I don't think anyone said that.

Q. Mr. Tillinghast, I want to be fair to you, but I am frankly somewhat puzzled, if I may say so. I understand your testimony to be that the primary concern that you had

*Tillinghast—Deposition*

which caused you to recommend rejection of this proposal by Merrill Lynch was your concern over this Boeing financing?

■1094] A. That's correct.

Q. And that the Boeing financing was something which had been in the works at least informally prior to your becoming chief executive, but it was progressing fairly satisfactorily?

A. That's correct.

Q. And you are now saying, as I understand, that you did not think it was important for anyone to communicate with these lending institutions to find out if, in fact, such a delay, or any delay in this subordinated offering, would, in fact, jeopardize this financing?

A. Mr. Davis, I didn't talk with the financing institutions. So far as I know, Mr. Leslie didn't talk with the financial institutions, except that both of us talked at some point, I am sure, with Mr. Sessel.

Q. Who talked to Mr. Sessel?

A. I say I am sure that both of us at some point talked with Mr. Sessel.

Q. You mean between May 11th and May 17th?

A. Yes, I have already testified to that, Mr. Davis.

Q. Proceed. I do not want to interrupt your ■1095] train of thought at the moment.

A. I was quite content to discuss this with Mr. Brandi and take Mr. Brandi's view on the subject, because indeed that is one of the reasons that we retain Dillon, Read.

Q. I am not suggesting that you did not previously describe this meeting or conversation with Mr. Sessel, but it just happens to escape me. Would you mind referring back to what you have in mind about a meeting or discussion with Mr. Sessel relating to this subject?

*Tillinghast—Deposition*

A. Well, I think I testified before, Mr. Davis, that somewhere between the time this first came up in the directors' meeting, that I had at least one conversation with Mr. Sessel during the course of which he said in substance, "This is a standard Hughes maneuver, to wait until the eleventh hour and then ask for time. He will ask for a week, and if he can't get a week, he will ask for a day; and if he can't get a day, he will ask for an hour; and if he can't get an hour, he will ask for a half hour."

Q. I remember that now. I would like you to explain how that meeting was called about and what was the purpose of the meeting. Was it for the purpose [1096] of discussing this very proposal?

A. Mr. Davis, I have no specific recollection of just when and where this was. It may have been by telephone. As we already established, I saw Mr. Sessel at the audit and compensation committee meeting.

Q. At 5:00 o'clock on the 16th?

A. On the 16th. It may have been there. Mr. Sessel occasionally drops in when he has an uptown meeting in the morning—he will just drop in for 10 or 15 minutes, and it may have been an occasion such as that.

At this point I can't tell you exactly when it was, but I do recall his warning to be very careful about getting into a situation where we had a delay.

Q. Did Mr. Sessel in those casual conversations with you or the meetings or discussions to which you are now referring, was he speaking for and on behalf of the lending institutions as a group?

A. No, I don't think he was speaking formally for the lending institutions. I think he was speaking more as a director of TWA.

*Tillinghast—Deposition*

Q. I am concerned at this moment at the effort made, or how you satisfied yourself that the lending [1097] institutions, or how the financing by the lending institutions was going to be jeopardized by a favorable consideration of this Merrill Lynch request.

A. Mr. Davis, I have been through that several times. I will try to do it again.

Q. I don't ask you to repeat anything you have already said.

A. Then I am afraid I have already said it all.

Q. Then I will repeat the question this way:

What efforts did you make, or anyone else on behalf of TWA, that you know about—what efforts did they make to communicate with the lending institutions as such for the purpose of determining their views or positions?

A. At this point, Mr. Davis, I cannot recall that anyone made any approach to the lending institutions other than the conversations that I had, and perhaps Mr. Leslie had, with Mr. Sessel—whether or not those are an approach to the financing institutions.

Q. So far as you know, Mr. Breech made no effort to communicate or contact any one of those lending institutions; is that right?

A. I know of none. I can't recall any at this [1098] point.

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[1217] By Mr. Davis:

Q. Mr. Tillinghast, resuming to the events that you were describing, which occurred at the meeting of the board of directors of TWA on May 17, 1961, it is a fact, is it not, that the Securities and Exchange Commission failed to accelerate the price amendment which was filed

*Tillinghast—Deposition*

on that date with the Securities and Exchange Commission?

A. That is correct.

Q. And it is correct, is it not, that subsequent to that date, TWA filed further amendments to its registration statements, other than the price amendment?

A. That is correct.

Q. And it is correct, also, that those additional changes or amendments to the registration statement of TWA were made as a result of conferences between TWA or its counsel and the staff of the Securities and Exchange Commission?

A. Certainly in part at least, Mr. Davis. I could [1218] not state at this moment whether all of them resulted from that, but that was true of the main body of them.

Q. Isn't it correct that one of the amendments that was made as a result of these conferences with the staff of the Securities and Exchange Commission was the disclosure of additional facts with respect to the position of certain lending institutions, in relationship to the control or management of TWA?

A. Mr. Davis, the only thing that I particularly recall at the moment is that there were rather copious quotations from a letter that you had written, which were embodied in the final prospectus. I believe there were also some related changes in the prospectus, but they don't come immediately to mind.

Q. It is a fact, is it not, that TWA, through its representatives, insisted upon, or requested a hearing before the Commission, itself, with respect to the price amendment, or the acceleration of the price amendment? You were aware of that, weren't you?

A. Mr. Davis, it is not clear in my mind who asked for the hearing before the Commission. I know there was a

*Tillinghast—Deposition*

hearing before the Commission, but I am not sure at this point whether we asked for it or you asked for it.

【1219】 Q. As I understand, at that time TWA and its management, and you in particular, felt that it was of extreme importance to TWA to have this registration become effective as soon as possible. That is correct, isn't it?

A. That is true.

Q. And you do understand that there was an oral presentation made to the Commission itself?

A. I do.

Q. Do you know on what day that was?

A. I hesitate to be positive about that. My recollection is that there were a couple of appearances before the Commission.

Q. Isn't it a fact it was on the 18th?

A. I was going to say if I had to guess, I would say the first one was on the 18th, and there was one subsequently, a week or so later, on the 24th or 25th.

Q. When the registration statement was eventually permitted to become effective by the Securities and Exchange Commission?

A. That is correct.

Q. I am referring to the first one, which was on either the 18th or the 19th—is that your recollection or do you have a recollection it was on the 18th?

【1220】 A. I wouldn't be positive about that. I think it was probably on the 18th, but I have no way of specifically ascertaining that.

Q. But you do know that as a result of this oral presentation before the Commission, the Commission refused to accelerate the price amendment filed by TWA?

A. That is correct.

*Tillinghast—Deposition*

Q. And it is also your information that the Commission requested the Tool Company, through its counsel, to submit within 24 hours a letter setting forth, or confirming what had been stated to the Commission orally?

A. That is correct.

Q. Let me refer you to Defendants' Exhibit 12, and ask you if you can identify that as being in fact the letter which was addressed to TWA, and the Securities and Exchange Commission under date of May 19, 1961, which was sent by the Tool Company or its counsel at the request of the Securities and Exchange Commission?

A. Mr. Davis, without checking every page of it, that appears to be the letter, yes.

Q. In the course of your deposition, you identified a number of documents and letters as reflecting, as I understood your testimony, what you considered to be part of malicious and wilful interference, or some other [1221] kind of interference, by the Tool Company or its agents and representatives in the affairs of TWA. Do you recall your testimony in that regard?

A. Yes, I do.

Q. Do you identify this same letter, Defendants' Exhibit 12, as one of the communications that you considered and regarded as part of that interference?

A. Mr. Davis, I can't recall. The record will show whether I did, in fact, so identify it. If you are asking me the question now, I will say yes, I would identify it now as such a document.

Q. Will you please explain in what respects you regard this letter of May 19, 1961 as a wilful or other kind of interference by the Tool Company in the affairs of TWA?

Mr. Sonnett: I think the question is argumentative. He wants the witness to argue as to what the

*Tillinghast—Deposition*

document says, and as to what construction he puts upon it. I think if he wants argument, that should be for counsel.

The Special Master: I think he may answer.

A. I feel as I do, Mr. Davis, because of the fact that it was made, I thought quite clear by yourself, that this letter was written for the purpose of interfering with the plans and programs of TWA. You told us at the directors meeting on the 17th that unless we were prepared to co-operate in a program that you wanted to put forward, in which event you would overlook these alleged deficiencies, that you would take steps to assert these things that are embodied in that letter.

The purpose for which it was written, in my opinion, was for the purpose of interfering with the running of the business of TWA by its management, as it thought it ought to be run, and to have it run in favor of the special and private interests of a specific stockholder.

Q. So that your recollection may be clear, Mr. Tillinghast, let me refer you to page 666 of your deposition.

Mr. Sonnett: Are you going to read from the record? If so, I will accept your reading of it.

Mr. Davis: Yes.

By Mr. Davis:

Q. (continuing) The question was following some others:

"Q. That is one letter that you had in mind as being an interference with TWA—

■1223■ "A. To the extent that it was part of an overall plan to interfere with the purchase of Boeing

*Tillinghast—Deposition*

aircraft, although I suppose the letter, on its face, is, let us say, fairly innocuous and routine. \* \* \*

I would refer to a letter dated May 16th. Then you continued as follows:

"A. \* \* \* The letter of May 19, 1961 to the Securities and Exchange Commission is, in my view, a clear interference with the management of TWA."

Do you now recall your testimony in that regard?

A. I am sure I so testified, Mr. Davis.

Q. Would you like to change that testimony now?

A. No. Are we talking about the same thing here?

Q. The letter of May 19th. May I show you Defendants' Exhibit 12 as the letter of May 19th?

A. My testimony is now, and apparently my testimony was then that I considered this a clear interference or an attempt to interfere in carrying on the business of TWA.

Q. I now would like you to explain the manner in which you believe this letter interfered with the management of TWA.

A. Well, it was done, in my opinion, for the purpose [1223A] and with the partial effect of delaying our registration becoming effective, with an aim, I believe, of so involving that registration in delay and controversy as to cause Boeing financing to abort, and to make it impossible for us to finalize our Boeing financing on the 31st of May.

[1224] Q. Mr. Tillinghast, I am going to respect your opinions as being your personal opinions. At this point I would like to ask you to state as fully as you can the facts and circumstances which had come to your attention, which is the basis of that opinion.

*Tillinghast—Deposition*

Mr. Sonnett: May I object to the form of that question. I think the witness gave a responsive answer to the question.

The Special Master: Isn't this a further development of that question?

Mr. Sonnett: I think with the wind-up that Mr. Davis gives his question, it is argumentative in form, he having asked the witness for his views, then says in effect he is not interested in those, he now wants to talk about something else. I think he just ought to put the question, and if so I will object on the ground it is repetitive, because the facts and circumstances preceding the date in question, the witness has testified to at great length a number of times. The record is full of it. This is a letter of May 19th.

The Special Master: If you ask the question as to the basis for his opinion, and confine it to anything he has not already described—

■1225] By Mr. Davis:

Q. I do not ask you, Mr. Tillinghast, to repeat anything that you have already said. You may incorporate anything you have already said by reference. I am interested in your stating as fully as you care to, the basis for the opinion you have just reiterated.

A. Mr. Davis, yesterday or the day before, I testified to the various circumstances which raised a great question in my mind as to whether or not this request for a week's delay was a genuine request, or was part of a scheme or device to delay the effectiveness of our registration and the offering of our debenture, and through that means to upset the consummation of the Boeing transaction.

*Tillinghast—Deposition*

I testified once before, I believe, although on the chance I am mistaken, I will say again that one of the reasons that convinced me of this was a statement that you are alleged to have made, to the effect that one thing that just was not negotiable was the Boeing purchase transaction in that you would do everything in your power to prevent its being consummated.

Q. Who reported to you these alleged statements attributed to me?

¶1226] A. Mr. Reed.

Q. When?

A. I would say at about the end of May, or the first of June. I can't remember the exact date.

Q. Let me understand something else then, Mr. Tillinghast. Is it your testimony that at the time this letter of May 19th to the Securities and Exchange Commission and TWA came to your attention, you did not then consider it an interference with the affairs of TWA, is that correct?

A. No, that is not correct, Mr. Davis. I did so consider it.

Q. Then I would like you to refer to the facts that you had on or before May 19, 1961, which led you to the opinion you have expressed, and to what you have described as an aim on the part of the Tool Company to upset the Boeing transaction, and again I want to say before Mr. Sonnett interrupts me, that I am not asking you to repeat anything that you have previously testified to. You may refer to that by reference.

A. I think I have several times testified, Mr. Davis, about those things which led me, let us say from the outset, to be very concerned with whether this was a diversionary maneuver.

*Tillinghast—Deposition*

【1227】 I have also testified about your own appearance at the board meeting, and the things that you said, which convinced me that my original suspicion that the aim of this was to divert and to delay, was a correct conclusion.

Q. In other words, your conclusion or opinion was based upon the facts that you have described in some detail in your deposition to date, is that correct?

A. That is correct.

Q. Is it fair to say that your characterization of the other documents that you identified on your deposition of January 10th, is also based upon those facts that you have heretofore described in your deposition?

A. Without going through each one of them, Mr. Davis, I would say generally yes, and I think I should add one other thing as part of the background against which this matter had to be viewed. I did not have any participation in them myself, but I was told by various people at various times that numerous attempts on the part of the voting trustee to meet with Mr. Hughes, or to find some basis for establishing a modus operandi, and the constant frustration of those efforts, and I am sure that what I had heard 【1228】 in that regard was one of the bits of background against which my judgment was formed as to what the purpose and aim of these various letters and actions was.

Q. Let me refer you to page—excuse me, are you finished? Let me refer you to page 668 of your testimony, Mr. Tillinghast, where your answer starts at the top of the page, when you refer to a letter of May 24, 1961, from Mr. Settles to Mr. Duckworth, which on its face is harmless except in the light of the purpose for which it was written, and then you continue as follows:

"The same—well, on May 25th, 1961, there is a letter to Mr. Hocker of the Securities and Exchange Commission,

*Tillinghast—Deposition*

which I deemed to have been for the purpose of delaying the effective[ness] of TWA's registration."

Do you see that testimony?

A. Yes.

Q. Let me hand you Defendants' Exhibit 11-D, which is a letter by me dated May 25, 1961, to Mr. Hocker, and ask you if that is not in fact the letter that you identified was referred to on page 668 of your testimony? Your answer is that it is, is that right?

A. Yes.

【1229】 Q. Who called that letter to your attention, Mr. Tillinghast?

A. May I see it again, Mr. Davis, please?

Q. Yes.

A. I am not altogether sure that I can say at this point, Mr. Davis. I think I received a copy of it in the mail, but possibly counsel gave it to me. I am just not sure at this point. Perhaps my own copy of it would refresh my recollection, but from that I can't tell you positively.

Q. Did someone explain to you the meaning or effect of this letter?

A. I don't believe so.

Q. Let me call this portion of the letter to your attention. After the first sentence of the second paragraph, which reads as follows, "As I told Mr. Hocker, my client Hughes Tool Company disclaims any liability or responsibility with respect to said registration statement, or any statements which appear therein or omissions therefrom.

"Said registration statement was prepared without consultation with or approval by Hughes Tool Company or its counsel. Furthermore, Hughes Tool Company has not acquiesced in, nor does it acquiesce in the 【1230】 accelera-

*Tillinghast—Deposition*

tion of the effective date of said registration statement. However based upon a limited review of amendment No. 6 thereto, and amendment No. 7 which was received by me late yesterday afternoon, Hughes Tool Company has no desire to delay appropriate action by the Securities and Exchange Commission in the circumstances making said registration statement effective."

Did you give consideration to that portion of this Defendant's Exhibit 11 in connection with your testimony, Mr. Tillinghast? Had you given consideration to that portion of the letter I just called to your attention, in connection with your testimony?

A. Mr. Davis, answering a question that you asked me a moment ago about how did I get this, I notice from the last paragraph that a copy of it was sent to me, and I am sure I received it in the normal course.

Answering your question about when I testified the other day did I particularly notice and ponder the significance of the part that you have just read—no, I did not.

Thirdly, is my answer changed? No, it is not.

Q. May I ask you another question? Isn't it a fact that when this letter was written to the Securities and Exchange Commission, the registration statement [1231] of TWA had in fact become effective?

A. I gather that is the case, and that is why I think the statement to which you referred was more a polite acquiescence of the inevitable rather than any gesture in our favor.

Q. What I am trying to get at, Mr. Tillinghast, is for you to explain to me what are the facts which support your conclusion that a letter acquiescing to what has taken place constitutes an interference with the affairs of TWA.

A. At the risk of being repetitive, Mr. Davis, let me say once again that I considered that this whole line of corres-

*Tillinghast—Deposition*

pondence, this whole line of activity, had but one purpose in mind—strike "but one purpose in mind"—had as its principal purpose the disruption of the Boeing purchase contract. "I believe you said as much yourself. It is all part of one plan and scheme, in my judgment, and every piece of paper written in pursuance of that plan and scheme constitutes, in my opinion, an improper interference with the affairs of TWA.

Q. Did you discuss with anyone those views and opinions at or about the time that you developed them?

A. Oh, yes, I am sure I discussed them with [1232] numerous people.

Q. Would you please identify the people with whom you discussed them most seriously?

A. Well, I am sure that I have expressed these views and to a degree discussed them with each of the directors of TWA. I have discussed them with counsel. I have discussed them with counsel for the voting trustees.

Q. When you referred to counsel before that, you mean Mr. Rowe?

A. Mr. Rowe.

Q. And counsel for the voting trustees, you mean Mr. Reed?

A. Mr. Reed. I am quite sure that on at least one occasion, maybe more, I discussed them with Mr. Olds.

I guess I would have to say, Mr. Davis, that I discussed them with probably everyone who had any legitimate interest in discussing the subject with me.

Q. Mr. Breech?

A. Oh, yes.

Q. Several times?

A. Many times.

Q. Mr. Sessel?

*Tillinghast—Deposition*

【1233】 A. Mr. Sessel.

Q. Any of the other representatives of the lending institutions, insurance companies in particular?

A. At some time or another, and I can't place it right at the moment, I am sure that I discussed this with Mr. Keehn.

Q. Of the Equitable?

A. Of the Equitable, yes.

Q. Anyone from Metropolitan?

A. I would have to get my dates straight to be sure, but I have a recollection that I discussed it with Mr. Hagerty, at Mr. George Bovneizer's funeral.

Q. With respect to that one, can you give us an approximate time and date?

A. If you can find out when Mr. Bovneizer's funeral was, I can give you an exact date, but I met Mr. Hagerty by chance at Mr. Bovneizer's funeral, and standing on Riverside Drive, in front of the Riverside Church—

Q. Was this in May, June, July?

A. It was in the warm weather. I would say it was in May or June, although I would want to check to be absolutely certain. I remember running into Mr. Hagerty at that time, which I believe was only the 【1234】 second time or third time, I guess, I had seen Mr. Hagerty, in talking with him about things. I believe we discussed the flood of letters that were then coming from you, and which we all were receiving, and the purpose and significance thereof.

Q. Was this more than a very casual conversation?

A. This was in a very casual conversation.

Q. Did Mr. Hagerty express any point of view, or make any statement to you which either confirmed the views you expressed, or which tended to indicate any disagreement with the views you expressed?

*Tillinghast—Deposition*

A. No. The only thing I can particularly—I am not sure that I can remember anything he particularly said, except that I think he said, "You have to get used to this," or something to that effect.

Q. Do you have a recollection of about when you had occasion of discussing this with Mr. Keehn?

A. Mr. Davis, I am going to change what I said, because on the 29th of May I saw both Mr. Keehn and Mr. Hagerty separately, and I am quite certain that I discussed this at that time.

Q. Did you have in mind another meeting with Mr. Keehn, other than this one on May 29th?

A. Yes. Subsequent to May 20th, I am sure there [1235] was at least one occasion, perhaps a couple of occasions, when I talked with Mr. Keehn about something on the telephone, and mentioned all the letter writing that was going on.

Q. That was a relatively brief and casual discussion?

A. As I recall it now, yes.

Q. Now going to this May 29th date, I understand that you on that day saw Mr. Keehn and Mr. Hagerty on separate occasions.

A. That is right.

Q. Let us pursue Mr. Hagerty for the moment. Was that at Mr. Hagerty's office or where was it?

A. That was at Mr. Hagerty's office.

Q. Do you remember when—in the morning or afternoon?

A. In the afternoon, around 3:30 or 4 in the afternoon.

Q. You will note that on Defendants' Exhibit 1, your calendar, there is no notation to that effect. Are you still ~~quite~~ confident it was on that date?

A. Yes. I am quite confident it was on that date.

*Tillinghast—Deposition*

Q. Was this before or after you had met with Mr. Keehn?

【1236】 A. This was both before and after I met with Mr. Keehn, because I met with Mr. Keehn, and then I met with Mr. Hagerty, and then I met with Mr. Keehn again.

Q. Perhaps you ought to describe then what was the occasion or circumstance that brought about this meeting or conference between you and these gentlemen?

A. Well, as I mentioned before, some time, a day one way or the other of the 24th of May, we got word that the Prudential would not participate in our financing.

Q. Excuse me for interrupting. I don't want to do it any more than absolutely necessary, but it would assist me if when you make an expression like, "we got word," if you would indicate someone reported something to you.

A. I think I already testified to that, Mr. Davis. We received word through Mr. Wadsworth that the Prudential would not participate in our financing. That left me in the unhappy position of being \$39 million short of the amount of money that I needed to have in hand on the 31st of May.

As a consequence of that, I did some scurrying around, and succeeded in setting up a meeting or meetings with Mr. Keehn and Mr. Hagerty and Mr. Sessel 【1237】 and Mr. Wadsworth for the afternoon of the 29th, which, since it was the day between the weekend—Memorial Day was a very slow day in the financial community—it is that which helps me place it exactly.

Mr. Leslie and I went to Mr. Keehn's office, and if I recall correctly, we met Mr. Sessel and Mr. Wadsworth there. Mr. Wadsworth, I believe, previously had talked with Mr. Keehn. The purpose of our visit was to urge upon Mr. Keehn that the Equitable, along with the Metropolitan take up the rather substantial slack that was left by the Prudential's withdrawal from the financing.

*Tillinghast—Deposition*

I urged it with all the vigor at my command, and pointed out that I was in the position where I had a deadline on the 31st.

【1238】 Q. That was a deadline by reason of your negotiating with Boeing?

A. Under the Boeing contract we had until the 31st of May to firm up our financing.

Q. Satisfactory to Boeing?

A. And to us. We had the right to cancel at a penalty of \$850,000 on the 31st, if we didn't have our financing solid. After the 31st, the contract became firm.

I said to Mr. Keehn that I didn't think that I could go to my board or to the Executive Committee and obtain authority to let this dating by, unless I had the financing in hand, and that I felt that there was nothing that we could do but ask them to increase their participation.

Mr. Wadsworth had already worked out some tentative deal which would involve having the banks take \$10 million more than originally planned. So that the amount of the insurance companies as a group would put up would drop from \$117 million to \$107 million.

What I was urging upon the Equitable was that they increase their participation from \$39 million to \$53-½ million, I guess the mathematics.

Mr. Keehn was very anxious that we find other 【1239】 insurance company money to participate in this, because he said that they had as deep a participation as they would like, and very much wished that we could find some other participant. He said he thought it would do TWA good in any event to broaden the number of companies with which it did financing, and broaden its credit picture as a consequence.

I suggested that they commit for this subject, with the understanding that first we try to obtain additional insur-

*Tillinghast—Deposition*

ance company participation, and that if we did, their share would be reduced.

He was worried about a technical problem in this regard, because insurance companies apparently cannot be underwriters, and he was afraid that if they agreed to take whatever was left, somebody might consider that they were improperly acting as an underwriter.

We suggested then—

Q. Who is "we"?

A. Mr. Wadsworth, or I. I can't remember exactly. That they commit for the full amount, and that without any commitment one way or the other for a scaling down of that in the event we found other insurance companies to participate, that we would, because we were equally anxious to obtain additional insurance company [1240] participation—that we would engage in an attempt to find additional insurance companies that would participate, and when, as and if we were successful in that regard, we would come back and renegotiate the deal.

Before we came to any conclusion in the matter, we went down to the Metropolitan, because we had a specific date—I can't remember whether it was 3:30 or 4:00, but we had a date at a specific time with Hagerty—we went down there and had a similar discussion with Mr. Hagerty, and I believe with Mr. Jenkins who was there.

Mr. Hagerty was, I would say, more appreciative of our problem, and more ready to act than Mr. Keehn, and I would say in approximately half an hour's time, we had what I took to be his personal commitment that he would recommend to his committee that their amount be increased up to the higher figure.

Q. \$53-1/2 million instead of \$39 million?

A. If that is the exact figure. Yes, I think that's right. Then we went back again to Mr. Keehn's office, and dis-

*Tillinghast—Deposition*

cussed the situation further with Mr. Keehn, and Mr. Keehn said that he would call a meeting of his committee on Wednesday, the 31st—yes, I am quite sure it was Wednesday, the 31st—that he would [1241] have a special meeting of his committee, and let me know the first thing on the 31st what he would be able to do.

He said that he personally was inclined to favor what [redacted] were suggesting, but that he didn't feel that he could say anything at all definitively until he had a meeting of his committee.

I should also add that during these discussions, Mr. Sessel indicated that he thought that it was entirely feasible for the banks to take another \$10 million, but that he didn't think the banks would be willing to go beyond the \$10 million limit.

Then we broke up and went in several directions.

Q. In your answer you referred to some discussion you had, I believe with Mr. Keehn, about the effort that would be made to get additional insurance companies to participate in this loan. Would you describe the effort that had been made, both prior to that meeting and subsequent to that meeting, by you or by TWA, or any of the representatives?

A. So far as I am personally concerned, Mr. Davis, I had made no effort at all. I am not sure to what extent, if any, Dillon, Read made an effort beyond trying to bring in the Prudential. My recollection [1242] is that Dillon, Read was concentrating on bringing in the Prudential as a third company, and as one, at least, of the very few companies that had indicated an interest in airline financing, and that no great effort had been put forward to bring in anyone else until after the Prudential fell through, following which Dillon, Read made several efforts.

Q. Can you describe what those were?

*Tillinghast—Deposition*

A. I know they approached, as I recall it, about five other insurance companies—Northwest Mutual, I believe was one of them. Massachusetts Mutual, I think, was one of them—and after having been turned down approximately five times, Mr. Wadsworth recommended they cease their efforts there, because he felt all this was doing was making a negative record for TWA, and it would be a mistake to continue the effort.

Q. I understand now the circumstances which brought about this meeting. Going now to the first meeting, which was with Mr. Keehn at the office of the Equitable—

A. That's right.

Q. I understand you were accompanied with Mr. Wadsworth?

A. Mr. Wadsworth was there when we got there, I [1243] believe.

Q. You went there with Mr. Sessel?

A. No. I think we met Mr. Sessel there. I went there with Mr. Leslie.

Q. You and Mr. Leslie went to Mr. Keehn's office?

A. Yes.

Q. And there you met Mr. Wadsworth and Mr. Sessel?

A. That is my recollection.

Q. Who else was present at that meeting, in addition to Mr. Keehn?

A. Mr. Keehn had either one or two other people with him, and I can't at this point remember who they were, Mr. Davis. I am quite sure it wasn't Bill Cowie, whom I know. I think it was someone—

Q. From the Legal Department, perhaps?

A. Possibly. Mandel something.

Q. M-a-n-d-e-l?

A. Mandel, perhaps, whom I wasn't familiar with.

*Tillinghast—Deposition*

Q. And the primary purpose of the meeting was to discuss the extent to which the Equitable would be willing to increase its participation from \$39 million to \$53½ million, is that correct?

A. The purpose of the meeting was to get a definite commitment out of them that I thought gave [1244] me the protection I needed on the 31st.

Q. In that connection you or someone else had occasion to refer to the activities of the Tool Company?

A. That's correct.

Q. Will you please describe how that came about, how the subject was introduced into the conversation, and what was said by the various persons there?

A. I can't, I am sure, Mr. Davis, remember everything that was said by everyone, but I know that among other things, I said that I thought that this was a very critical question. That I was satisfied that Hughes Tool Company was doing everything it could to prevent the consummation of the Boeing Transaction. That it was a clear example, I thought, of Hughes Tool trying to prevent the management from doing what the management considered to be in the best interests of TWA.

That they had set up a voting trust for the purpose of giving TWA an independent management that would run the company in an independent businesslike way, and that this was the first test the new management was being put to.

I thought if the management was to have power [1245] to run the company as it thought was in the best interest of the company, it at this time needed their support sufficient to enable the management to go ahead with the Boeing deal on the 31st.

Q. Do you recall what Mr. Keehn said, in substance?

A. What Mr. Keehn said in substance was that he quite appreciated that and understood it, and he felt unquestion-

*Tillinghast—Deposition*

ably some way of working this out would be found, and we should not worry too much. That undoubtedly there would be some solution, and I told him that I didn't think that I could go before my board or Executive Committee and just express the hope and speculation that something would work out that would make everything all right. That I felt that I had to have on the 31st a definite commitment for my financing, and that [if] I did not have a definite commitment for my financing, I did not see how I could go ahead with the Boeing contract.

Q. Did you also explain or have occasion to remark at the apparent efforts of the Tool Company to seek funds with which they might try to upset the voting trust?

A. No, I did not, Mr. Davis. I don't believe I discussed that.

■1246■ Q. As I recall your prior testimony on or about May 17th you were very much concerned about the activity of the Tool Company, because it might adversely affect this financing arrangement. You were no longer concerned about the 29th?

A. I don't understand your question, Mr. Davis.

Q. You do recall testifying, do you not, that on May 17th your concern that the efforts of the Tool Company through Merrill Lynch to obtain a delay in the offering of the subordinated debentures was because of the impact it might have on this financing?

A. Yes.

Q. You were concerned about that?

A. I certainly was.

Q. As I understand, prior to the 29th you had not explored the validity of that concern with the insurance companies, had you?

*Tillinghast—Deposition*

A. If I may digress a moment, Mr. Davis, on that subject I would like to, let us say, amplify some of my testimony of yesterday.

As a result of talking with Mr. Rowe and scratching my own head and doing some thinking overnight, I am quite certain that Mr. Leslie on or about the 11th or 12th, possibly the 15th—somewhere along there—[1247] talked with the insurance companies, and asked them whether a delay would make any difference with respect to the financing. I believe, if I recall correctly, that he got a letter, a response that the insurance companies wouldn't take a definite position on it, but maybe it might.

I asked counsel to see if he could find, and they haven't yet, what I think is a memo that Mr. Leslie—either a memo for the files, or a memo he wrote me, let us say, just summarizing what the insurance companies had said. I just wanted to clarify that, since we got into this, and I am afraid I have lost the other.

Q. You say it is a memo that you are looking for at the moment?

A. Yes.

Q. May I request that when you find it, you furnish me with a copy of it?

A. Sure. I am not absolutely positive of that, Mr. Davis, but I think I am right, and I think we will find it sooner or later.

Q. You may be thinking of the memo you received with respect to conversations relating to the June 10th letter?

[1248] A. That is one of the things that troubles me, because I am trying to sort out the two things in my mind. But I think there is a memo anyway. Let me see if I can find it. I am, from thinking about it, quite sure that Mr. Leslie did talk—I am not sure whether he talked with

*Tillinghast—Deposition*

all three or not, but I know he talked with some of the insurance companies, and got some sort of a maybe out of it.

Q. Now to go back to the thread we were on. I recall your prior testimony to be, starting on May 11th, thoughts occurred to you of the possible efforts the Tool Company might make to refinance the existing moneys, or some other way terminate this voting trust. Do you recall that?

A. In order to clarify that, because I am not sure I would put it quite as you have—my recollection is that when Mr. Leslie first told me about this, and said some of the things to which I have already testified, we had a casual speculation as to what the probable purpose and meaning of this thing was, and that one of the things that was said at that time was that maybe what Hughes is trying to do is to raise enough money so that he can find some way of refinancing.

【1249】 Q. And such efforts on the part of the Tool Company could have had, in your opinion an adverse effect on the additional financing that was then contemplated with respect to the Boeing program?

A. No, I don't think that—you have to assume a lot of things, Mr. Davis. I would suppose, and I am not sure that I really thought about it this way—I would suppose that I would have to agree that if there were a complete financing, and a termination of the voting trust, you obviously would have had a very real question as to what you did for further funds. But that was something, let us say, in the power and knowledge of Hughes Tool Company and not particularly within mine.

Q. Basically within those efforts on the part of the Hughes Tool Company, which in your view was jeopardizing the Boeing financing?

*Tillinghast—Deposition*

A. No, they weren't, Mr. Davis.

【1250】 Q. I understood that you felt the delay in the offering of the subordinated debentures, which, admittedly, was not going to produce any more cash to TWA, was having or potentially would have an adverse effect on this Boeing financing. That is correct, isn't it?

A. Yes.

Q. That was the underlying basis for refusing the request of the Tool Company?

A. That's right. Let me say, Mr. Davis, that was one of the reasons.

Q. For refusing the request of the Tool Company?

A. That's right.

Q. The other reasons are reasons you have already described?

A. Yes. Everything that I would add as additional reasons has already been described.

Q. You felt that the insurance companies were likely to withdraw their support of the Boeing financing if for some reason this offering by TWA was delayed; is that correct?

A. I am not sure that I would say they were likely to. The question in my mind was whether there was any risk that they might, and I wasn't prepared to take 【1251】 any substantial risk.

Q. Did you ever understand the factual basis for that risk that the insurance company might withdraw their support if there was a delay in the offering by TWA?

Mr. Sonnett: I do not think you understand the purport of that question in the light of the witness' prior testimony.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Do you understand my question?

A. I am not sure that I did. Perhaps if the reporter will read it back I will get it straight.

(The question was read.)

A. Let me answer that this way, Mr. Davis: I was very much afraid that if this thing were delayed—

Q. The offering of the subordinated debentures?

A. The effective date—and then we got into a controversy of the sort in part that we got into beginning on the 17th of May, that this might well upset the financing, and indeed my fears, or the substance of my fears was too clearly indicated, too clearly substantiated when, in fact, the Prudential did fall out.

Q. I understand that you felt that this occurrence [1252] might well upset the financing, and in fact it caused the Prudential to pull out.

What I want you to describe to me now, apart from your opinions, is what is the factual basis for that opinion. What were you relying upon—what anybody told you, or what did you think was going to happen? Why did you think it might upset the financing? Do you follow what I am trying to get from you?

A. Mr. Davis, I think I have testified to most of this several times, but I will take one more try at it here.

TWA had had a heritage of tremendous controversy, a heritage of tremendous controversy, delay and uncertainty, with respect to its financing.

The quarrels, disagreements, difference of viewpoint between Hughes and a number of financial institutions were well known.

*Tillinghast—Deposition*

We had a very important plane program involving a vast amount of money, which had a deadline.

I considered it a real risk, which I did not want to take, that if we got bogged down in delay, if we missed the date of the 21st for the offering of the subordinated debentures, if the Hughes Tool Company took a technical position, which I understand [1253] they have taken many times in the past, we might find ourselves going into June, July, August, in the midst of controversy, all of which involved the risk, in my opinion, that we might unhinge our financing, which seemed to be very nicely set up on a reasonably favorable basis, and that was a chance that I just was not willing to take. I thought it certainly would not be in the interest of TWA to take it.

Q. Have you discussed yesterday's testimony with anyone other than Carl Rowe?

A. No, sir. I will have to modify that. Mr. Sonnett was present down in the main hall here when I talked with Mr. Rowe.

Q. At that time in May you had been the president of TWA, or chief executive officer, for a couple of months?

A. I had been chief executive officer just one month on the 17th of May.

Q. Who had told you about this heritage of controversy and difficulties with the financing institutions? What facts had been called to your attention, or were you relying solely on newspaper accounts, or what is sometimes described as "what everybody knows"?

[1254] Mr. Sonnett: It is, then, what he has already testified to. He has been over this repeatedly about the account in Fortune Magazine—he has been all over this several times.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Were you relying on the same thing as what you described, what you knew at the time you had your meeting with Mr. Breech on February 28, 1961?

A. No, between February 28th and this time I had learned quite a number of things in conversations with executives of TWA and conversations with directors of TWA, and conversations with Mr. Reed, conversations with Mr. Rowe. Rightly or wrongly, Mr. Davis, I developed the impression that Hughes was not an easy person with whom to do business, nor particularly a straightforward one.

Q. Will you identify the officers or directors of TWA with whom you had those discussions between February 1961 and May, from whom you obtained information which, in your judgment, was sufficiently reliable to permit you to formulate the opinion you have expressed?

A. I have already mentioned Mr. Leslie.

Q. Mr. Sessel?

■1255] A. Yes.

Q. Mr. Slack?

A. Yes.

Q. Mr. Breech?

A. Mr. Breech, Mr. Reed.

Q. Let us keep lawyers out of the way for the moment. Let us talk about people that I can interrogate more easily.

A. Mr. Cocke, Mr. Rummel, Mr. Rowe.

Q. You mean the attorney, Mr. Rowe?

A. Attorney, Mr. Rowe.

Q. And lesser people?

A. Several of the directors, lesser people.

Q. You mean some of the directors other than those included in this list? Mr. McBain, for instance?

*Tillinghast—Deposition*

A. No, I don't recall anything particularly from Mr. McBain.

Q. Mr. Maestre?

A. Mr. Maestre.

Q. Any of the newly selected directors—Mr. Leithead, Mr. Hood?

A. No, I don't remember anything. I think it is unlikely they had much to say about this, because their association with the situation was very new also.

【1256】 Q. Is it fair to say that all those people told you substantially the same thing, or did you get a lot of varying accounts from these people that you have identified?

A. Numerous, varying accounts. Most of this was in the course from time to time of casual conversations, various remarks about this, that and the other thing. It is an impression that I developed.

I might say that what I had read in the press perhaps made it a fertile field to give significance to some of the things.

Q. Can you recall or can you identify any particular conversation that you would be willing to describe as a serious conversation, where the effort was to describe or detail facts?

A. I mentioned one conversation with Mr. Leslie, and I don't know whether that really qualifies or not. I don't recall, with the possible exception of Mr. Rowe, having had what you would call serious conversations on this subject.

If you mean, for example, my calling someone in and sitting down and saying, "What do you think of Mr. Hughes," the answer is that I didn't do that.

Q. No, I am not thinking of personal 【1257】 characterizations of Mr. Hughes.

*Tillinghast—Deposition*

Do you know anyone who knows Mr. Hughes well personally?

A. No. I guess I would be safe in saying that I don't.

Q. You know many who would like to?

A. I know, for example, a person like Mr. Six, of Continental—some people say he knows Mr. Hughes well.

I don't know whether he does know him well or not, but I don't know anyone who I know first-hand knows Mr. Hughes well.

Q. My question was directed, really, Mr. Tillinghast, to facts relating to transactions or relations between the Tool Company, or Mr. Hughes, and these financial institutions which formed the basis for your conclusion that TWA had a heritage of delays, or unsatisfactory financing relations.

A. Mr. Davis, so far as that is concerned, I would have to go back to the article in Fortune.

Q. That is what you were relying on primarily?

A. The Spook and The Banker—with respect to relations between Hughes and the financial institutions. I have been told—

[1258] Q. By whom?

A. I believe by Mr. Rowe and by Mr. Sessel, and possibly others that I don't recall at the moment—that that was a very accurate article. From Mr. Reed and Mr. Rowe I know that all sorts of difficulties were encountered in actually getting delivery of the 880s.

I also know it from Mr. Rummel. That Mr. Hughes had agreed to deliver pursuant to the 1960 settlement.

I know that Mr. Hughes was at least difficult in permitting Hughes' directors to constitute a quorum of the meeting of TWA following the 1960 settlement.

Q. By "settlement" you mean financing?

A. The 1960 financing, yes. I had no reason to feel that I could count on any different tactics from Mr. Hughes

*Tillinghast—Deposition*

than those which apparently had taken place, and I had no intention, having been in this position approximately a month, of being caught with a big plane order on my hands and no financing to cover it.

Q. Did anyone ever tell you that should the Hughes Tool Company be successful in refinancing this [1259] 1960 financing, it would become impossible for TWA to obtain financing necessary for the Boeing program?

A. No.

Q. Nobody ever told you that?

A. No.

Q. And you were satisfied that could be done, even though the voting trust terminated; is that correct?

A. No, I wasn't satisfied one way or the other, Mr. Davis. So far as I was concerned, when, as and if Hughes Tool Company could terminate the voting trust according to the provisions thereof, it was perfectly free to do so, and that was none of my business.

My business was to run TWA in accordance with the interests of TWA and neither to favor Hughes Tool Company nor to discriminate against Hughes Tool Company, and that is the way I have tried to run it.

Q. So that your concern as to the inability of TWA to finance Boeing was wholly related to the possibility of Hughes Tool Company realizing some \$100 million in cash or thereabouts if it had been permitted to have a secondary at the time of that TWA primary offering of subordinated debentures?

[1260] A. That's correct.

Q. And the report to you by Mr. Leslie that this might be what Mr. Hughes or the Tool Company had in mind, that was not a matter that concerned you at all?

*Tillinghast—Deposition*

A. I didn't consider what the Hughes Tool Company proposed to do in a financial way was any proper concern of mine.

Q. And you consider your testimony today to be consistent with the testimony you have given heretofore?

A. I do.

Q. Going back to this meeting of May 29th, did you have occasion at that time to discuss the interfering activities by the Tool Company, or its representatives, or counsel, with Mr. Keehn?

A. Yes, I have already testified to that.

Q. You have testified that you did. Now I would like you to tell me how that meeting came up and what you said in that regard.

A. I just testified to that about 10, 15 minutes ago.

Q. I don't believe that you have other than to advert to the fact that you were worried that Mr. [1261] Hughes might be doing something.

I would like you to tell me, did you discuss with Mr. Keehn the letters to the Securities and Exchange Commission?

A. No.

Q. Just what did you discuss? Can you tell me what took place in relation to the activities of the Tool Company which you felt were interference with the management of TWA?

A. I said, in effect, Mr. Davis, that I considered that the recent actions of the Tool Company had been for the purpose of preventing consummation of the Boeing purchase; that they had already succeeded in frightening out one of the insurance companies; that this represented the first, let us say, large project of an independent TWA management; and that if they were to accomplish what they sought

*Tillinghast—Deposition*

by setting up a voting trust, that I thought in this hour of crisis, if you will, they ought to support the management of TWA doing what it considered to be in the best interests of the company.

And if in this particular instance Hughes proved his ability to prevent the management doing what their judgment told them they should do, that to [1262] my mind it presages a breakdown of the whole situation.

Q. Will you please explain how the Prudential was frightened off?

A. By the letter that you wrote, and by the fact that they didn't want to get into a controversial situation with a controversial person.

Q. Which letter that I wrote do you believe frightened them off? May I refer you to a letter dated May 26, 1961, which is Defendants' Exhibit 11F. Although I don't want to suggest to you this is the letter, but I am guessing, but I want to help you, if I can.

A. No, this isn't the letter.

Q. The letter to the SEC?

A. The letter to the SEC.

Q. The May 19th letter?

A. The publicity connected therewith.

Q. What is the basis for your believing that Prudential was frightened off by reason of this letter of May 19th to the SEC?

A. I would say two facts, Mr. Davis: one is that obviously it would have that effect, that potential effect; and, secondly, that Mr. Wadsworth told me from conversations he had with Chappalear, [1263] he was convinced that was the sole reason.

Q. Your conclusion to that effect was based upon what Mr. Wadsworth of Dillon, Read told you?

*Tillinghast—Deposition*

A. That's correct, plus what seemed to me obvious on the face of it.

Q. Obvious on the face of the letter?

A. Obvious on the face of the situation.

Q. You are still referring to the situation as developed in your testimony?

When did Prudential indicate directly or indirectly that it was withdrawing from this financing program?

A. Approximately the 24th of May.

■1264] Q. How was that done?

A. It was done in a conversation with Mr. Wadsworth, to which I have already testified.

Q. Between Mr. Chappalear and Mr. Wadsworth?

A. I believe it was Mr. Chappalear.

Q. Can you give me the substance of what Mr. Wadsworth told you was the conversation he had with Mr. Chappalear or any one else at Prudential?

A. All that I can remember at this particular time was that there were several conversations, the first one or two of which had to do with requests by the Prudential for information relative to the voting trust and possible means by which it might be terminated.

I can't bring to mind exactly what the problem is at this moment, but they had some problem troubling them as to the permanence of the voting trust, and the ability to satisfy themselves that it couldn't be circumvented.

Then the final conversation was one in which Chappalear called Wadsworth, and told him that he was very embarrassed. I believe he said this was the first time he had ever been turned down by the committee on something which he had recommended, but that they were not going to get into this situation, and he said that ■1265] this is one you couldn't reopen with a crowbar. There is no point in coming back.

*Tillinghast—Deposition*

Q. And Wadsworth told you this on the 26th of May; is that correct?

A. Wadsworth told me this—I don't know exactly when. He didn't tell it to me on the 26th of May, because I was in Seattle that day. I believe, in fact, he first told Mr. Leslie, and Mr. Leslie told me at some subsequent date. I don't remember exactly when I discussed it with him myself.

Q. But some time before the 29th?

A. I am not sure that I discussed it with him myself before the 29th. As I say, I am quite sure that I first learned about it through Mr. Leslie.

Q. I understood you to say that on the 29th you were telling Mr. Keehn that the Prudential had been frightened off?

A. Yes.

Q. So somebody had told you that before the 29th?

A. Yes. Mr. Leslie told me the day it happened, which was either the 23rd or the 24th.

Q. You just said that you were aware of several requests by the Prudential—about the requests on the voting trust, and how it could be terminated.

【1266】 A. All I can recall at this point is that they spoke to Ted Wadsworth, and wanted some information relative to it. I believe he called Mr. Leslie, and I learned of it through Mr. Leslie.

Q. Do you know what Mr. Wadsworth told the Prudential?

A. I think I did know. I am quite sure I did not. I can't bring to mind at the moment just what the point in issue was. I knew it at the time.

Q. How long had the Prudential been interested in participating in this financing?

A. I don't know exactly. Ever since I got into the picture they had been considered a party to the financing.

*Tillinghast—Deposition*

Q. Is there a question in your mind but that the Prudential had been aware for some time as to the existence of this voting trust?

A. There is no question about that.

Q. Have you any reason to believe, or did anyone ever tell you that the Prudential withdrew from this possible participation because of the possibility that the Hughes Tool Company might re-finance the 1960 financing, and thereby terminate the voting trust?

A. No.

【1267】 Q. Did anyone ever tell you as to why the Prudential was so interested for detail information as to the circumstances under which the voting trust could be terminated?

A. I had the impression that they had before them, and were concerned with the question of whether the voting trust was sufficiently copper-riveted that they would be prepared to take the plunge in face of the fact that there seemed to be a controversy developing.

Q. So you understood that the Prudential was interested in a copper-riveted voting trust?

A. That is correct.

Q. Who told you that?

A. Mr. Leslie and/or Mr. Wadsworth.

Q. Mr. Sessel?

A. No, I don't believe I talked of this with Mr. Sessel.

Q. Did you ever make an effort to communicate with the Prudential to urge them to consider continued participation in this financing?

A. I personally?

Q. Yes.

A. No.

*Tillinghast—Deposition*

Q. Did you have any particular conversation with [1268] anyone to act on behalf of TWA, to make efforts to persuade them to remain interested in this financing?

A. I can't recall, Mr. Davis, whether my conversations were solely with Mr. Leslie or with Mr. Leslie and Mr. Wadsworth, but I know it was Mr. Wadsworth's strongly expressed opinion that there wasn't any chance of reopening the thing.

I think, as a matter of fact, he did have some further conversations the next day, and his advice was that this was a completely closed matter, and "You might as well forget about it."

Q. I don't understand what you mean by reopening the thing, and something being a closed matter, Mr. Tillinghast. Could you explain what it meant to you, if that was the expression used by Mr. Wadsworth?

A. I have already several times said that Mr. Wadsworth was told this was something you couldn't reopen with a crowbar.

Q. What thing was something which couldn't be reopened with a crowbar?

A. The Prudential turndown.

Q. Did he explain to you what brought about this change of mind on the part of the Prudential who had been interested in this thing since before you became [1269] president, and this turndown?

A. Yes. He said that in his opinion it was the fuss being kicked up by Hughes Tool Company.

Q. By that you mean the request for the extension of time—what you described from May 11th until the registration statement became effective on the 24th?

A. Yes, the sequence of events. I am talking principally about the position which you took on the 17th of May.

*Tillinghast—Deposition*

Q. Before the board of directors?

A. And the SEC.

Q. And the SEC?

A. Mostly the SEC.

Q. And you were told by Mr. Wadsworth that it was the efforts made by the Tool Company to raise \$100 million in cash through a secondary offering that closed the door down tight, that could not be reopened? Is that your testimony?

A. No, it is not my testimony.

Q. What is it that Mr. Wadsworth told you to explain to you, as chief executive officer, as to why the Prudential, who had been interested in this financing for some time, some time prior to the time you even took office, in this period of May, the thing was closed, [1270] could not be reopened, and forget it. How did you satisfy yourself that was a fact?

A. To my mind, Mr. Davis, the likelihood of this was so obvious, that I didn't go around asking questions such as "Do you think financial institutions are sometimes scared away by controversy?" Of course, they are. It was perfectly obvious what the problem was, and I have no doubt you intended it to be that way.

Q. Let us state on the record the fact which made it so obvious. Assume for the moment I don't understand the obvious facts as readily. Will you please do that for me? What was it that was so obvious to you, that the Prudential Insurance Company should have withdrawn from its participation in this financing between May 11th and May 24th?

A. All I can say, Mr. Davis, is that my experience makes it sort of self-evident to me, that financial institutions prefer frequently not to put large amounts of money into situations which are fraught with controversy.

*Tillinghast—Deposition*

Q. What controversy was in existence between the Tool Company and TWA during this period we are talking about? At this point, Mr. Tillinghast, let me remind you that unless you are looking into a crystal ball, [1271] you had no idea of what was going to develop subsequently, did you?

A. I had a suspicion that turned out to be frighteningly accurate.

Q. Do you think the Prudential had the same crystal ball?

A. I suspect they had enough foresight to suspect some of the things that might lie in store.

Q. The effort of the Tool Company to re-finance and terminate the voting trust?

A. No.

Q. What controversy were you expecting, or you understood the Prudential was visualizing, as a result of the request made by the Tool Company through Merrill Lynch on May 11th for an opportunity to arrange some \$100 million, and turn this interim note from the 1960 financing into cash?

A. That is not what I am talking about.

Q. Let us put it on the record.

A. Let me finish. What I am talking about is the letter you wrote to the SEC on the 17th, I believe, of May, which contained numerous charges, and was well publicized in the papers, and certainly was fraught with controversy.

[1272] Q. Let me hand you now Defendants' Exhibit 12. Please indicate the portions of that letter which you considered to be these "numerous charges," which in your judgment was the basis for the Prudential withdrawing from this financing.

A. Mr. Davis, beginning on page 11 of this letter where it says:

*Tillinghast—Deposition*

"Mr. Davis, who is approving this letter, states that based upon every fact known to him to date, including conversations had with Mr. Howard Hughes, and other representatives of the Tool Co., the position being taken by the Tool Co. is not a device or an effort on the part of the Tool Co. to interfere with the offering contemplated by TWA to its common stockholders."

Beginning with that sentence, and reading on through the following paragraphs—and I will try to pick up here where to stop—but the part to which I am referring is that part commencing where I just read, and continuing on—

Mr. Davis: May I suggest while the witness is looking at this, a recess be taken. Perhaps the witness, with the assistance of his counsel, will be able to identify the portions of the letter [1273] more readily.

The Special Master: Let us take a seven-minute recess.

(Whereupon, a short recess was taken.)

The Special Master: Do you want the question read to you?

By Mr. Davis:

Q. You were in the process of identifying—

A. I want to get the question accurately, so I can give you an accurate answer.

(The question was read.)

*Tillinghast—Deposition*

- A. Continuing on to the end of the letter.
- Q. Did anyone tell you that it was those portions of the letter which frightened the Prudential?
- A. No.
- Q. This letter was addressed to TWA and the SEC, was it not?
- A. Correct.
- Q. And it is dated May 19th, and presumably was mailed on or about that date. Do you know when you received your copy?
- A. I presume my copy would show that it was the next day or so. You say it was mailed on the 19th, which was a Friday.
- 1274■ Q. Actually, it was not until Saturday, because if you will recall, your counsel indicated anxiety of receiving it as soon as possible. The SEC required it be done in 24 hours, and the operation was a little behind schedule.
- A. I think I probably first saw it on Monday, the 22nd.
- Q. And it is addressed to TWA, to your attention, and to the SEC, the attention of Mr. Hocker?
- A. That is correct.
- Q. Do you know or can you explain how this letter came to the attention of Prudential?
- A. Not specifically, Mr. Davis, no.
- Q. What is your information as to how it got to the attention of Prudential? May I suggest to you perhaps Dillon, Read sent it to them?
- A. I just don't know, Mr. Davis. I would just be guessing.
- Q. If you received this letter on Monday, the 22nd, I thought you testified that you heard the reaction from the Prudential about the 24th of May, didn't you?
- A. That is correct.

*Tillinghast—Deposition*

Q. And you have no information whatever as to how this letter got into the hands of the Prudential so [1275] as to frighten them?

A. Mr. Davis, I don't know whether this letter, as such, got into their hands. At the moment I have no recollection of any knowledge as to whether it did. It may have gotten to them, or excerpts from it may have gotten to them through the revised registration statement, because, as you will recall, portions of this were—

Q. In the registration statement?

A. Yes.

Q. That was by reason of action between counsel for TWA and the staff of the SEC, wasn't it?

A. That is correct. They may have read about it in the newspapers. At this particular point in time I just can't tell you how they learned about it, but I am quite sure that they were aware of it.

Q. Do you know who, if anyone, undertook to make a copy of this letter available to the other lending institutions, other than the Prudential?

A. Well, at this particular sitting, I can't say positively that a copy of it was made available to them, but I presume that at some point along the line they obtained copies.

[1276] Q. When you had this meeting on the 29th, was Mr. Keehn and Mr. Hagerty, or their associates, who were present, had they seen a copy of the letter? Did they comment upon it?

A. I am sure they were aware that a letter had been sent, and were generally familiar with its contents. Whether they had actually received copies of the letter, I would have difficulty in saying at this point.

Q. Mr. Tillinghast, if you considered the letter to contain statements which to you seemed obviously interfering

*Tillinghast—Deposition*

this serious financing program, are you certain that you did not make any inquiry to discover as to how this damaging letter got into the hands of the financial institutions?

A. I am sure that I didn't make any inquiry. It may well be that at the time I knew whether it had gotten into their hands, and if so, how it had gotten into their hands.

Q. But it was not an important fact so far as you were concerned?

A. The important fact was they did know about it, and indeed properly they should. Whether they had exact copies, which parts of it they read, wasn't a [1277] matter of any concern at all to me. We had a controversy on our hands. It was well known, and that was the important circumstance.

Q. I believe we started this line of questioning, Mr. Tillinghast, because I was trying to find out what had been discussed between you and certain other people.

A. Yes, sir.

Q. This feeling of yours that the Tool Company was attempting to interfere with something or other. I would like you to address yourself once more to that meeting of May 29th in Mr. Keehn's office, and those there present, and ask you if you can recall anything else that was said by anyone at that meeting, either agreeing with your statements, as you have testified to, or disagreeing to portions of it, or making any comment whatever.

Would you like to have your previous testimony as to what you said at that meeting read back to you?

A. No. As I said before, Mr. Davis, Mr. Wadsworth and I and Mr. Keehn did most of the talking. As I recall it, Mr. Leslie had very little to say. Mr. Sessel commented on what he thought the banks would be prepared to do in order to increase their participation.

*Tillinghast—Deposition*

【1278】 At the moment I can't recall anything significant that was said over and beyond that to which I have already testified.

Q. You then went to Mr. Hagerty's office?

A. That is correct.

Q. Who attended that meeting?

A. Mr. Wadsworth, Mr. Sessel and I.

Q. And who was there from the Metropolitan?

A. As I testified before, Mr. Hagerty and Mr. Jenkins.

Q. I gather from your prior testimony that that was a relatively short meeting?

A. My recollection is that it lasted just about exactly half an hour.

Q. Will you describe what took place, what was said by you or Mr. Wadsworth, Mr. Hagerty or Mr. Jenkins?

A. Well, as I recall it, I made substantially the same statement to Mr. Hagerty as I made to Mr. Keehn, pointing out what I considered the importance of supporting TWA in its efforts to acquire the flight equipment which it considered that it needed.

I alluded to the problem that was presented by the withdrawal of the Prudential.

【1279】 Mr. Wadsworth outlined the modified proposal that he thought would be a feasible and satisfactory one.

I believe Mr. Sessel again stated what he thought the banks would be prepared to do.

Q. Without repeating what took place before the Equitable, I am interested primarily as to what was said about the Prudential withdrawing or not withdrawing, the activities of the Tool Company, the effect upon the financing—that is the area I am interested in, Mr. Tillinghast. I assume that you discussed, as you did with Mr. Keehn,

*Tillinghast—Deposition*

whether they would take \$53.5 million instead of \$39 million?

A. That is right.

Q. Now the rest of the conversation.

A. I don't at this point, Mr. Davis, recall much, if anything, that was said about Prudential, other than the fact of their having withdrawn, and our desire to find a substitute insurance company to take their place, and the impossibility of achieving this before the 31st of May.

Q. Let me hand you what has been marked as Defendants' Exhibit 22, which if you will recall, are the notes of the telephone conversation between Mr. Kerr [1280] and Mr. Gordon of the Bank of America, on May 16, 1961, and direct your attention to what appears at the bottom of those notes, beginning with the line which reads "Ben"—referring to Ben Sessel—"this is only one reason why Hughes wants money—to buy out a voting trust. Crown might come up with balance of money. Dillon, Read and other"—something "banks, three insurance companies (including Prudential), plus Ben, and Bob Kerr attended meeting with lawyers for lenders and TWA lawyers. Meeting was to determine that insurance companies were together on major points of 1961 financing."

"Choate"—who is Choate, is he counsel for Irving?

A. He is counsel for the group of banks.

Q. "Choate says he would not approve anything that would not preserve the voting trust."

That would seem to indicate, Mr. Tillinghast, that Mr. Sessel, based upon some information he obtained as to the approach that had been made by Merrill Lynch, indicated the possibility that Hughes may want to buy out the voting trust, doesn't it—at least somebody thought that?

A. Yes.

*Tillinghast—Deposition*

Q. You were not unaware of that, were you—of [1281] that possibility?

A. I have already testified to that.

Q. And Dillon, Read and other banks, and the three insurance companies, including Prudential, and Ben and Bob Kerr, attended a meeting. You were not aware of that?

A. I am sure I was aware of it. The lawyers were working on the detail of the agreements with the financial institutions, and I gather this was a meeting for that purpose.

Q. This was obviously sometime on or before May 16th, wasn't it?

A. I would think so, yes.

Q. That was before any letter on behalf of the Hughes Tool Company, that contained any nasty implications, isn't that right?

A. Yes.

Q. There was a meeting with lawyers for lenders. Who were the lawyers for the lenders?

A. I am not sure that I know, Mr. Davis. I think probably someone from the Cravath firm for the insurance companies, and Choate, or someone from his firm for the banks.

Q. Who were the TWA lawyers?

[1282] A. I presume Mr. Rowe, or one of the partners or associates.

Q. Anyone else?

A. I don't know specifically who was there.

Q. There was a meeting—the meeting was to determine that the insurance companies were together on major points of 1961 financing. Was that a meeting held without your knowledge, acquiescence, or any information as to what that meeting was about? Were there any reports on the meeting?

*Tillinghast—Deposition*

A. A whole series of meetings were going on about this time, and about the only thing I knew about them was that the lawyers and people working on the detailed negotiations were meeting and trying to work out the deal.

Q. At that meeting the Irving Trust was represented, wasn't it?

A. All I know is what appears from here.

Q. And the Irving Trust was aware of the possibility that Hughes might want some money to buy out the voting trust, isn't that a fact?

A. Mr. Davis, you can read this just—

Q. I am asking about the facts you were aware of, Mr. Tillinghast. After all, you were the chief [1283] executive of TWA.

A. I have no knowledge specifically about this meeting, or what Mr. Kerr told somebody at the Bank of America.

Q. And Choate says that he would not approve anything that would not preserve the voting trust. Are you quite sure that Mr. Sessel, the Irving Trust, or someone explained to you as the chief executive officer of TWA, that the condition of this new financing was on the condition of a preservation or continuation of this voting trust, and that anything that might happen or give the likelihood that the Hughes Tool Company might "buy out the voting trust" would jeopardize or adversely affect the Boeing program?

A. You include several things in there, but I was never told by Mr. Sessel, nor as far as I can recall by anyone else, that the buying out of the voting trust by Hughes would jeopardize this financing.

From the first time that the subject of the voting trust in connection with this financing was mentioned, it was my understanding that the financial institutions would insist on some sort of a voting trust protection, so long as the financ-

*Tillinghast—Deposition*

ing was outstanding. But beyond that, the answer to your ques- [1284] tion is no.

\* \* \* \* \*

[3626] The Special Master: There is this problem, Mr. Davis, that in accordance with Judge Metzner's order, after certain depositions are taken, one of the depositions scheduled is that of Mr. Hughes.

If he is not served—there is the problem of getting that accomplished. On the other hand, if it is within my power, the power of the Federal Court, and my appointment as Special Master, to see that that service is accomplished before the day arrives rather than have to wait until that time, I have the problem now of whether I should do anything to interrupt in order to accomplish that.

I am not sufficiently knowledgeable to know the full extent of the power of the Special Master in that area.

On the other hand, as I have said, I am not disposed to just let an important individual, insofar as he might be able to contribute to the facts in this matter, just avoid participating at his will, if the Court has the power to make it otherwise.

I think probably the best way is to proceed [3627] with Mr. Tillinghast's deposition, and for anyone who cares to, of any of the parties to the litigation, to submit a week from Monday briefs as to whatever authority the Court has to demand from the Hughes Tool Company, or anyone else over which it has such power, the present whereabouts at any particular time of Mr. Howard Hughes, so as to be of assistance in making it possible to take his deposition in accordance with the Court's order—I think that will permit us to go ahead, and then we will all have an opportunity to develop the law in regard to the rights.

*Tillinghast—Deposition*

Mr. Davis: I have no objection to that, Mr. Rankin, of course. I am merely trying to point out at this time that when these discovery proceedings commence, at that time Mr. Sonnett will be in a position to examine officers of the Tool Company, and I assume that a proper area of discovery would be the location, if known, by those individuals, or which individual would be likely to know who is a person subject to the jurisdiction of the Tool Company.

The point I am making now is, and I am sure [3628] it is not always intentional on the part of counsel of TWA, is to, in effect, interfere with the priority which also has been established, much more clearly, than the suggestion that the Court order the deposition of Mr. Hughes.

It merely recognized that a notice for the taking of Mr. Hughes' deposition as a witness was served, and that deposition, together with any other deposition of the Hughes Tool Company, was to await until the Hughes Tool Company had an opportunity to complete its discovery proceedings.

While we recognize the importance of dates and the necessity of proceeding expeditiously, we are doing everything but that, through the device of interrupting at all possible occasions the oral examination which the Hughes Tool Company has a right to pursue and continue.

The only thing which the Court has done, that I am aware of, to this date, has merely been to provide, contrary to the usual practice, but for reasons which undoubtedly existed here by reason of what was asserted, that it was essential and important to furnish this plaintiff and these additional defendants—the Court with respect to [3629] this plaintiff, and the Special Master's ruling with respect to additional defendants—with documents, so that they could adequately prepare themselves and participate in these oral examina-

*Tillinghast—Deposition*

tions which are now being conducted by the Hughes Tool Company.

In one way or another, and ever since this complaint was filed, counsel for TWA has been seeking ways and means to upset or defeat or frustrate the orders of this Court with respect to the priority which the Hughes Tool Company has obtained in this discovery proceedings, and that is what I am objecting to.

I have no objection whatever, of course, to any time the Special Master wishes a particular point of law to be briefed, to undertake to do so, within the time allowed for the preparation of such briefs.

But I do respectfully submit that there is a point in what Judge Bromley said this morning, that we are continuously spending time in diversions.

I think it would be helpful if we all could agree that having produced the documents that were required to be produced, and I do not know [3630] why the Hughes Tool Company should be treated differently than anybody else with respect to the production of documents—we now have done that, however long it may take Mr. Sonnett to complete his microfilming process—and now let us return to where we were, without taking away from the Tool Company the right to conduct its oral examination, and complete it before counsel for the Tool Company has to go into fishing expeditions—whether on or off the record—it is interfering with what I am required to do.

I do not understand why I should be required to take the time of myself or my staff to make a lot of inquiries of all the employees of the Hughes Tool Company to find out if anybody knows where Mr. Hughes is.

Mr. Sonnett: I think there is a very good reason why counsel should do exactly that.

*Tillinghast—Deposition*

I think it is about time that counsel came to grips with the problem that the Federal Court has the power to enforce and protect and secure its jurisdiction.

A lot of tougher guys than Howard Hughes learned that, including John Lewis, when the [3631] Court dealt with his attempt to thumb his nose at Court orders.

I refer to page 3455—the master said you communicate with Mr. Hughes and get Mr. Hughes to respond in writing, after he has seen a certified copy of the order, whether he has documents or not.

The only communication sent to Hughes was sent to 7000 Romaine, and Hughes is not there.

This is illusory. If counsel is going to communicate with Hughes, I want a copy of the communication, and it ought to be sent to where Hughes is.

That will solve the problem. If he does not know how to reach him, let him say so.

If counsel is willing to represent that nobody at Hughes' company knows where this man is hiding, let us have it out on the table, and then I feel warranted in continuing to spend thousands of dollars trying to find him.

But a lot of this money is minority stockholders' money. It is not just Hughes' money. I think it is time we came to grips with the real problem.

[3632] What happens here is a delaying battle by Mr. Davis. He says he does not represent Hughes, but represents the corporation—with the idea of keeping this man beyond reach of Federal process.

I think when the Master directs counsel to communicate with Mr. Hughes, counsel has got to communicate with him effectively. I think it is that simple.

I think if Hughes Tool Company knows where he is, they should be obliged to tell.

*Tillinghast—Deposition*

Mr. Hughes will be represented by able counsel in due course in this case, whether Mr. Davis or somebody else.

His rights are not being offended by Hughes Tool Company being required to disclose where he is, so that the process of the Court can be brought to bear.

The Special Master: I will take that question up right after I receive the briefs a week from Monday.

Mr. Sonnett: Yes, sir.

Mr. Davis: So there will be no question on the record with respect to the activities of [3633] counsel, by addressing communication to 7000 Romaine Street, is the only way that I know of to make a communication available to Mr. Hughes. There is no mystery about anything.

It is where messages or communications are to be addressed, and when Mr. Hughes, who was known for years to have been a person who does not necessarily stay in one place any particular length of time—when he calls in and finds out what messages are there for him, and what other communications, and then, through some courier arrangement, sends somebody and picks it up. There is no particular mystery about it.

I just want to make it clear in addressing the communication which I did address, which, by the way, is not the one Mr. Sonnett is referring to, because the communication I addressed to 7000 Romaine Street was the one pursuant to the instruction of the Special Master, I sent a notice to Mr. Hughes inviting him to participate in these depositions, as I recall it. I stated this morning, as counsel for TWA well knows, that I have not purported to take any steps whatever with respect to whatever directions were [3634] given by the Special Master last Tuesday. I will attend to it just as soon as I have an opportunity to do that.

The Special Master: I shall assume that the communication directed to 7000 Romaine Street in Los Angeles to Mr.

*Tillinghast—Deposition*

Hughes got to him, unless he comes into court under oath and establishes that he not only did not get it, but also that he did not have a reasonable opportunity to get it.

Mr. Davis: You may rest assured, Mr. Special Master, that the communication will reach Mr. Hughes.

The only problem I have is when it may reach him. It may not reach him the day that it arrives at 7000 Romaine Street, but at some point in time, it will reach Mr. Hughes.

\* \* \* \* \*

**[3640] Examination (cont'd) By Mr. Davis:**

Q. Mr. Tillinghast, before the luncheon recess you indicated that if you were given the opportunity to do so, you might be able to refresh your recollection as to the persons with whom you might have discussed in a serious manner the contents of the letters of June 10th and June 9th, which have been marked as Defendants' Exhibits 56 and 57. Have you had an opportunity to think the matter over?

A. Not any substantial opportunity, Mr. Davis. Most of the time I was away from here was spent in discussing other matters, and as a consequence I do not have any materially different recollection than [3641] I had before.

Q. Do you think it is possible that you might have had a serious discussion with respect to the contents of these two letters and not recall it at this time?

A. Quite possibly.

Mr. Sonnett: I take it that question does not mean a serious discussion of these letters at lunch today, just so we are clear about it. I take it the witness so understood.

The Witness: That's right.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Do you have Defendants' Exhibit 56 before you?

A. I do.

Q. Do you recall the other day you were explaining the reasons why you felt that this letter or portions of this letter constituted an interference, an improper interference with the affairs of TWA?

A. I recall that I testified regarding that.

¶3642 Q. Referring to what has now been marked Defendants' Exhibit 56, which is the letter of June 10th, but which has your marginal notes, I first find on the top of page 3, in connection with the sentence which reads—at the bottom of page 2—"Hughes Tool Company is prepared to place in escrow securities of a value commensurate with such undertaking, which would be forfeited in the event that Hughes Tool Company fails to perform in accordance with any obligation it undertakes pursuant to this proposal."

Do you see that sentence?

A. Yes.

Q. In the margin you have a line and the note "What securities?"

Do you see that?

A. Yes.

Q. That is in your handwriting?

A. It is, all of this is in my handwriting.

Q. At the top of the page you have "Securities of TWA—listed securities."

I take it that those notes were made at the time that you received this letter, and before you had any discussion of the letter with anyone, ¶3643 isn't that correct?

A. I wouldn't say before I had any discussion of the letter with anyone, Mr. Davis. As I recall the circumstance

*Tillinghast—Deposition*

when this letter came in, before I had had a chance to read it carefully, and I think make these notes, there were very brief discussions with Mr. Cocke and Mr. Leslie merely of the fact that a letter had come in. It may well be that those discussions preceded the making of these notes. I believe these notes were made before I had any discussion of the substance of the letter with anybody.

Q. You mean you heard from Mr. Cocke and Mr. Leslie, or you mentioned the fact to them that such a letter had been received—this might have happened before you began to study the contents of the letter, is that what you mean?

A. That is what I said, yes.

Q. My question to you is, these notes which I have just referred to you, were made by you the first time you sat down to consider the contents or merits or lack of merits of this letter?

A. I believe they were made the first time that I read the letter carefully.

【3644】 Q. And that was before you had any of these personal or telephone conversations with Mr. Rowe, Mr. Reed or Mr. Leslie, or possibly Mr. Breech?

A. Having to do with the substance of the letter.

Q. Having to do with the substance of the letter?

A. Yes.

Q. Can you explain, or does this refresh your recollection as to what these two notes I have referred to mean?

A. I was just curious as to what securities were being talked about, and whether they were securities of TWA, whether they were the subordinateds, debentures, or whether they were other securities such as listed securities.

Q. In other words, at the time that you began to seriously consider this proposal No. 1, you were interested in whether or not—or what the Hughes Tool Company pro-

*Tillinghast—Deposition*

posed to do by its statement that it would put in escrow securities of a value commensurate with the undertaking described?

A. Yes. What I had in mind, as I recall it, was that there would be a substantial difference between TWA's own securities, and, for example, listed securities, which were independent of and [3645] had a value independent of TWA and TWA's securities.

Q. TWA's securities are listed, are they not?

A. Yes, these particular ones were.

Q. The TWA common stock is listed?

A. Yes, Mr. Davis.

Q. The debentures which have been issued in May of 1961 were listed?

A. Yes.

Q. The warrants that were issued in connection with those income debentures are listed?

A. Yes.

Q. But you were, as I understand your testimony, interested in the difference between the possibility of escrowing TWA securities, or some other kind of listed securities?

A. Yes, I had two questions. I believe one is whether we were talking about securities of TWA, and whether we were talking about listed securities. What I had in mind was the question of what in the event that we entered on such program, and there was a default, what we would have by way of security.

Q. Do you think that was important for you or for TWA to determine what kind of securities the Tool Company was prepared to put in escrow as [3646] security for the performance of any undertaking it was making?

A. I think anyone who is taking securities in escrow, would be curious as to what securities he was taking.

*Tillinghast—Deposition*

Q. Did you make any inquiry as to what securities the Tool Company contemplated placing in escrow?

A. I would have to refresh my recollection by looking at the letter, but my recollection is that in my reply to this letter I raised that question.

Q. You mean you would like to look at a letter which you wrote in reply to this letter? Is that what you mean?

A. I said if my recollection is correct, I referred to this in a letter which I wrote in response to this letter.

Q. I am asking you to describe or identify what you did to determine what securities the Tool Company contemplated placing in escrow. Is your answer that the only inquiry you made was whatever you said in a letter which you wrote in response to this?

A. That is my recollection.

Q. You don't recall what the inquiry was?

■3647■ A. Yes, I recall what the inquiry was. If I am correct it was an inquiry made in my letter.

Q. Do you know what the nature of the inquiry was?

A. What securities were contemplated.

Mr. Davis: May I have marked for identification as Defendants' Exhibit 58 letter dated June 16, 1961 from Mr. Tillinghast to Mr. Holliday?

(Letter dated June 16, 1961 from Mr. Tillinghast to Mr. Holliday marked Defendants' Exhibit 58 for identification, as of this date.)

Q. Let me hand you what has been marked as Defendants' Exhibit 58, being a letter dated June 16, 1961, addressed to Mr. Holliday, and ask you if that is the letter to which you have reference?

A. Yes, that is the letter. I see here on page 2 a paragraph marked "A" covers this.

*Tillinghast—Deposition*

Q. I notice that this letter was addressed—a blind copy was sent to Mr. Breech, Mr. Olds, and Mr. Reed, and a copy to Mr. Rowe. Do you see that at the bottom of page 5 of the letter?

A. Yes.

Q. Had you discussed with either of those [3648] gentlemen your reply, or this letter of June 16th, Exhibit 58, before sending it?

A. I have the recollection, Mr. Davis—I am not positive of this, but I think I sent a draft of my letter to each one of these individuals, and to each of the directors.

Q. A draft?

A. A draft.

Q. Do you recall about when?

A. It obviously would have been between the 12th and 16th. I would guess on the 13th or 14th.

Q. Do you know what happened to those drafts?

A. No, I don't, Mr. Davis.

Q. Do you have any recollection of having destroyed the draft?

A. I am sure I didn't.

Q. Your recollection is that you sent that draft to each of the directors, with the possible exception of Mr. Holliday?

A. I think that is right, Mr. Davis, yes.

Q. You did not send a copy of that to Mr. Holliday?

A. No, I don't think I sent a copy to Mr. Holliday.

[3649] Q. But to Mr. Leslie and Mr. Cocke?

A. I believe to all of the directors.

Q. When was the last time you saw that draft?

A. I would guess about the 16th of June.

Mr. Davis: Mr. Special Master, I realize this witness has not personally assumed the responsibility,

*Tillinghast—Deposition*

quite understandably, of the production of documents. I wonder if the question could be addressed to counsel for TWA as to whether or not they are satisfied that any draft which may be in existence, either in the files of Mr. Leslie or Mr. Cocke, or anywhere else, is still in existence.

I am informed that we did not receive any such draft.

Mr. Sonnett: I cannot answer that without making inquiry. I will make inquiry.

May I note on the subject of Mr. Holliday, that this was apparently—what the witness is describing is the draft of a reply to a letter which Mr. Holliday sent, to, among others, himself as voting trustee. It would be strange to send Mr. Holliday a draft of a proposed reply to Mr. Holliday's letter. However, we will [3650] make inquiry.

I don't know whether the drafts were produced or are available. If they are, they certainly will be.

A. Let me say, Mr. Davis, that I have the impression that drafts of letters that turned into final letters are rather regularly disposed of in the normal course, and are not kept permanently in the file. If I am correct in my recollection, however, there should be a covering letter.

Q. That is what I am looking for too!

A. Sending the draft to the directors:

Mr. Sonnett: You needn't ask if there are covering letters. We will produce those too if they are around, and haven't been produced.

The Special Master: All right.

*Tillinghast—Deposition*

Q. Do you recall receiving any comments from anyone with respect to this draft that you circulated to all the directors?

A. I am sure I received a few comments. My recollection is, Mr. Davis, that there were not very many. Maybe if I glance at this—

¶3651] Please do, because my next question was going to be to ask you to describe what change of any substance you recall was made between the draft and the letter that was actually sent.

A. One comes to mind, Mr. Davis. Referring to page 2 of Defendants' Exhibit 56, and particularly to that portion, the last sentence of the page, which reads "Should you question the ability of Hughes Tool Company to perform, or its good faith in submitting the offer represented by this proposal."

My recollection is that my first draft of this reply contained a slightly sarcastic remark to the effect that I was not surprised that you would raise a question as to whether we thought this was in good faith.

Mr. Reed suggested that it was not an act of statesmanship to be smart or sarcastic.

Q. Do you recall any other change that you might consider a change of any substance?

A. It is my recollection that the first full paragraph on page 3, which reads "You are mindful," and so forth—

Q. Which letter are you referring to now?

A. Defendants' Exhibit 58. —was suggested ¶3652] by someone else, I think by Mr. Leslie, but possibly someone else. My recollection is that the following paragraph relating to the approval of the Civil Aeronautics Board was somewhat expanded and elaborated as a result of suggestions from others.

*Tillinghast—Deposition*

Q. Do you know who?

A. My recollection is that that came from counsel, but I wouldn't want to be positive. In a quick reading through of Exhibit 58, Mr. Davis, those are the only changes that occur to me at this time, although I wouldn't want to represent that I recall this exactly enough to say those were the ones.

Q. Those are the only changes in substance which come to your mind?

A. That's correct.

Q. Do you recall the nature of the remark that you originally contemplated making, which Mr. Reed suggested might better be eliminated?

A. I don't remember it exactly, Mr. Davis. I remember at the time I thought it was rather well phrased, but at the moment all I can recall is that if was something to the effect that I wasn't surprised that you would recognize the possibility that we [3653] might question the good faith of Hughes Tool Company in submitting this proposal.

Q. Did you have any question in your mind as to the ability of the Hughes Tool Company to perform, as distinguished from its good faith?

A. I had some question, yes, Mr. Davis. When I say that I don't mean, as I recall it, that I had substantive information that entitled me to have an opinion that they couldn't perform, but there was an obvious question in my mind as to whether in fact they could perform and would perform.

Q. But there was not such a question in your mind that caused you to question it in your response or in your discussions with others, is that correct?

A. I didn't question it in my response. I don't recall particularly questioning it in my discussions with others.

*Tillinghast—Deposition*

Q. At that time you were aware of the securities of TWA, at least, which were held by the Tool Company, were you not?

A. Yes, I was.

Q. Did you have any idea what the market value of those securities were at the time that you were considering this letter, namely, on or about June [3654] 10th or June 12th?

A. No, I can't bring that to mind, Mr. Davis, except I recall that during this period they were slipping in value. The market, as I recall it, was shrinking fairly rapidly.

Q. Do you recall when in fact the offering was made of these debentures?

A. The offering had been made the latter part of the preceding month.

Q. Do you recall when the closing was had with respect to those debentures?

A. I don't recall when the closing was had, but I think the debenture offering—the offering became effective about the 24th or 25th of May.

Q. But that was when the registration statement became effective. I am talking about the closing. Don't you recall, Mr. Tillinghast, that there was some question, and a great deal of correspondence you referred to, as to whether or not there should be some delay in the closing so as to permit full and adequate consideration of proposal No. 2, namely, the subscription of another \$11 million of debentures?

A. Yes, I do, Mr. Davis, but if I am not mistaken, the debentures with warrants attached were [3655] admitted to trading, and were being quoted in advance of the closing.

Q. I understand that, but I am trying to understand your testimony with respect to the value of TWA securities had begun to slip on or about June 10th or June 12th,

*Tillinghast—Deposition*

and I am trying to address your mind to the offering price that had in fact been paid by the public at or about the time of the closing, as distinguished from at or about the time of the offering.

A. I remember, Mr. Davis, that when they were first offered and admitted to trading, they were selling on a when-issued basis at a substantial premium, and by the time the subscription period was complete, that premium had disappeared, and they continued to go down.

From almost the day they were quoted first, they appeared to go down, and at this point I can't relate exactly to you in relation to the 12th of June.

Q. You recall, do you not, that at closing, Hughes Tool Company was going to surrender a \$100 million interim note, and receive subordinate debentures in the face value of \$100 million?

[3656] A. Yes.

Q. And those debentures had just been offered to the public pursuant to a registration statement by TWA at par, isn't that right?

A. No, they weren't offered to the public. Mr. Davis.

Q. As to the stockholders?

A. Rights to subscribe were offered to the stockholders.

Q. The right to subscribe at par?

A. The right to subscribe at par, that's right.

Q. Approximately \$18 million to \$20 million of those debentures were in fact subscribed for by the minority stockholders, or the public to purchase rights?

A. That's correct.

Q. And subscribed to those debentures at par?

A. That's right.

Q. Did that indicate to you that at or about that time the Hughes Tool Company received the securities or cash of a value of approximately \$100 million?

*Tillinghast—Deposition*

A. I am sorry, I am not sure I understood your question

【3657】 (The question was read.)

A. The Hughes Tool Company didn't receive cash. The Hughes Tool Company surrendered a note for the securities.

Q. And the cash. Isn't it a fact, Mr. Tillinghast—you seem surprised.

A. That's right.

Q. Isn't it a fact that all of the cash realized by the subscription from the public, of approximately \$18 million to \$20 million was to be paid to the Hughes Tool Company in reduction of the note, or the interim note?

A. That's correct.

Q. And the balance the Tool Company had agreed to accept these subordinated income debentures?

A. Right.

Q. Which had just been offered to the public, through rights offered to the stockholders, which rights offerings were traded to the public?

A. That's correct.

The Special Master: How about a little recess?

(Whereupon, a short recess was taken.)

【3658】 By Mr. Davis:

Q. At that time you knew, did you not, that the Tool Company also held approximately 78 per cent of the outstanding common stock of TWA?

A. That is correct.

Q. And is it correct that at that time the market price was in the neighborhood of \$20 a share?

*Tillinghast—Deposition*

A. That would be approximately so, yes.

Q. Did you know at that time about how many shares the Tool Company owned of TWA stock?

A. Yes, I did.

Q. What was that?

A. You mean the numerical number of shares?

Q. Yes.

A. It was five million odd out of six million six outstanding.

Q. The market price of \$20 a share—did you go through that mental computation at least when you made that note "Securities of TWA, listed securities"?

A. I am not sure I went through the complete mental process, Mr. Davis, but the question in my mind as to whether or not, and it seemed to me quite significant in its context—whether or not you were talking about securities of TWA, which in the event of a default on the under-[3659]taking to subscribe additional equity would depreciate very substantially in value, or whether they related to negotiable or listed securities which would not be affected by any default, and would therefore be a better security than TWA's own securities.

Q. I appreciate that, but at the moment I am directing myself more to the doubt in your mind, or whatever was in your mind, as to the ability of Hughes Tool Company to perform what it was proposing or undertaking to do.

Isn't it a fact that 5,200,000 shares, more or less, of TWA common stock at that time represented marketwise, at least, something in excess of one hundred million dollars?

A. Yes.

Q. And that would be one hundred million dollars worth of securities in addition to the one hundred million dollars of cash and income debentures that the Tool Company had

*Tillinghast—Deposition*

received at the closing which took place in the early part of June?

A. That is correct.

Q. Am I to understand from your testimony that you still had some doubts in your mind as to the ability of the Tool Company to perform any undertaking described in [3660] this letter of June 10, 1961?

A. Of course, Mr. Davis, the ability of the Tool Company to perform would not depend alone on the assets it had, but would also depend on the liabilities it had. As to what the liabilities of the Tool Company were, I didn't know.

Q. Did you make any inquiry?

A. No. I remind you again, Mr. Davis, these were notes I was making as I was reading the letter and these questions were coming to my mind.

Q. I appreciate that, but at the moment I am interested in what you in fact did in connection with this letter which you received. You noted, did you not, the paragraph on the last page of Defendants' Exhibit 56, which reads "Mr. Chester C. Davis, who is empowered to discuss all or any of the above proposals, and to take whatever action is necessary to commit Hughes Tool Company with respect thereto, will be continually available to you during the next ten days."

Do you see that?

A. Yes.

Q. My question to you is, did you make any effort to communicate with me with respect to all or any of the above proposals, or any doubts or problems which you had [3661] in your mind as to the ability or good faith of the Tool Company?

*Tillinghast—Deposition*

A. I communicated with you, Mr. Davis, through Defendants' Exhibit 58.

Q. You mean the letter which you addressed to Mr. Raymond Holliday, at the Hughes Tool Company, the Gulf Building, Houston 2, Texas?

A. Yes, and a copy of which was sent to you or delivered to you in New York.

Q. Did you make any other effort to communicate with Mr. Davis?

A. Not that I recall.

Q. Did you ask anyone else representing TWA—Mr. Leslie, or counsel—to communicate with Mr. Davis with respect to the proposals, and the extent to which he might be prepared to commit the Hughes Tool Company, or anything of that sort?

A. No, I did not.

Q. Was this a matter of any discussion between yourself and anyone else as to the desirability of communicating for the purpose of discussing any of these proposals, or any doubts that you might have had in your mind as to the ability of the Tool Company to perform, or the good faith of the Tool Company, or anything of [3662] the like?

A. Yes, Mr. Davis. These were discussed, and I discussed them, I am sure, with Mr. Rowe and Mr. Reed principally, I think. I know it was my own judgment based on those discussions that in view of the way this proposal had been made, in view of the fact that Mr. Holliday, who had been requested by me to come in and sit down and discuss anything of interest had chosen not to do that, but write a letter of this sort, which seemed to me to be more a letter for the record than anything else. That the appropriate way to respond to the letter was to write a formal response, and that is what was done.

*Tillinghast—Deposition*

Q. Was that the conclusion you reached as a result of a conference or discussion with Mr. Breech or Mr. Seessel or any of the other directors to whom you sent a draft of this proposed letter of June 16th, Exhibit 58?

A. I think, Mr. Davis, it was my own initial reaction and one with which no one disagreed. I can't recall at this point with exactly whom I discussed it. No doubt I discussed it with some others, but my recollection is what seemed to be a carefully phrased letter should have a written reply.

Mr. Davis: May I have this document marked [3663] as Defendants' Exhibit 59 for identification.

(Copy of Western Union Telegram dated June 19, 1961, marked Defendants' Exhibit 59 for identification, as of this date.)

By Mr. Davis:

Q. Let me hand you what has been marked as Defendants' Exhibit 59, Mr. Tillinghast, which is a telegram from Mr. Holliday addressed to you as president of TWA, under date of June 19, 1961, and I call your attention to the lower right-hand corner, the date of June 19, 1961, and underneath that appears "President's Office."

My question is, is it a fact that is a telegram which you received on June 19, 1961, from Mr. Holliday?

A. That is correct.

Q. And that telegram stated or called to your attention that the letter of June 16, 1961 stated that Mr. Davis was authorized to discuss with you and commit the proposal of Hughes Tool Company, and refers also to another letter dated June 13, 1961, reaffirming that Mr. Davis was avail-

*Tillinghast—Deposition*

able to consider those proposals with you, and you received that on June 19th, did you not?

A. I received Defendants' Exhibit 59 on June 19th.

Q. You see at the bottom of that exhibit, "Copy made for C. S. Rowe, Esq.," and underneath that [3664] in handwriting "Who supplied copy of reference to C. C. Davis"?

A. Whose handwriting is that?

Q. It was not until you received the telegram from Mr. Holliday on June 19th that you took steps to arrange for Mr. Rowe to deliver a copy of that letter, isn't that a fact, Mr. Tillinghast?

A. No, it is not a fact, Mr. Davis. In fact, it refreshes my recollection that before this was received I had already asked Mr. Rowe to be sure to see that a copy was delivered to you. I note that June 19th was the Monday immediately following the Friday on which the letter of the 16th was sent out.

Q. Now that your recollection has been refreshed as to what you did with respect to seeing to it that Mr. Davis received a copy of your letter of June 16th, can you tell us what your present total recollection is as to what took place with respect to the desirability or lack of desirability of communicating directly with Mr. Davis with respect to the extent to which the Tool Company was prepared to commit itself, or discuss any of these proposals that were outlined in the letter of June 10th?

A. Mr. Davis, I don't recall any discussion of that [3665] particularly. I wrote the letter to Mr. Holliday because it was in response to a letter that was written to me by Mr. Holliday. It had been my custom that counsel communicated with counsel, and principals communicated with principals.

*Tillinghast—Deposition*

When I got the letter from Mr. Holliday, I considered it, I am sure without any great thought, but the normal thing was to reply to Mr. Holliday.

Knowing that you were active in this, I asked Mr. Rowe to see that you got a copy of it.

Q. There was no litigation extant at that time, was there?

A. No.

Q. When you gave the consideration which you gave to the letter of June 10th, were you aware of the fact that the letter by Mr. Holliday advised you that Mr. Davis was the person to contact or communicate with, with respect to the subject matter of the letter?

A. I know what the letter said, Mr. Davis, but as I recall it, Mr. Holliday did not suggest to me that I should reply to a letter from him to somebody else.

Q. Did anyone suggest to you directly or indirectly that it would be inadvisable for you to communicate directly with Mr. Davis?

■3666] A. Not that I can recall. I don't believe anyone did.

Q. Did you understand that there was a time limit within which the proposal could be considered, unless an extension of time was obtained?

A. Mr. Holliday's letter so stated.

Q. Referring you to Defendants' Exhibit 56, the first full paragraph appearing on page 3, besides the sentence which reads "The foregoing proposal is open for consideration by you for a period of ten days from the date hereof." Next to it you have a note "Too short."

Do you see that?

A. Yes.

Q. That is a note in your handwriting?

A. Yes.

*Tillinghast—Deposition*

Q. Did that indicate at the time you read the letter you felt that ten days was too short a time within which to adequately consider the proposal set forth in the letter?

A. It suggested this to me, Mr. Davis, that these proposals which you refer to were by no means complete proposals which could be accepted merely by saying yes.

They seemed to me obviously, if in good faith, [3667] at best, proposed basis for discussion.

It seemed to me abundantly apparent that ten days was nowhere nearly a long enough time within which to work out an arrangement such as was suggested by you in this letter.

Q. So that in effect you concluded ten days was too short a period of time?

A. Yes, I think I commented on that in my letter.

Yes, I said here "It clearly will not be possible to dispose of the equity financing proposal within ten days period suggestion in your letter."

Q. Did that suggest to you that if you wanted to get more time for consideration of the proposal, it would be desirable to communicate with Mr. Davis as soon as possible for the purpose of at least asking for an extension of time?

A. I was quite sure, Mr. Davis, and in fact it was the case, that we would be in communication before the ten day period expired.

Q. You are referring to the letter which you wrote to Mr. Holliday in Houston, Texas, dated June 16th?

A. Yes, a copy of which was delivered to you on the 19th.

Q. Did you understand that that was a letter primarily for the purpose of asking for an extension of time?

A. No, it was not.

Q. Did you give consideration as to the desirability of asking for more time to consider these proposals?

*Tillinghast—Deposition*

A. I felt, Mr. Davis, that if this proposal were in good faith and had any substance, that the time consideration would be quite immaterial.

Q. You have indicated in your prior testimony that you seriously questioned that these proposals were submitted in good faith.

A. I did.

Q. What facts or assumptions were you making at that time that made you question the good faith of these proposals?

A. Well, I would have to go back, Mr. Davis, and start with the matters that began on the 12th of May, or indeed I would have to go back beyond that. I would have to go back to the fact that since I had become president, Mr. Holliday had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest.

I refer to the fact that we had this proposal for a postponement of our rights offering, a proposal [3669] which in my opinion was not a genuine proposal, but was aimed at delaying and impeding and interfering with our Boeing financing.

I had the fact to which I testified that Mr. Reed had advised me that you had told him that the matter of the Boeing purchases was something that could not be compromised.

I had in mind the fact, and this goes back to your request for an adjournment, that you had told us in effect if we would postpone our offering as requested, you would waive and forget about what you considered serious deficiencies, and if I may paraphrase, a fraud on the public, in our registration statement.

*Tillinghast—Deposition*

I have in mind the fact that after talking a lot about Hughes Tool Company's desire to distribute its subordinate debentures to the public as soon as that ceased to be a possible tool for delaying our registration, Hughes Tool Company showed no interest whatever in following up on our proffered cooperation for a secondary offering which could have been done quite as quickly as the offering that the Tool Company purportedly was interested in.

I am referring to the fact that prior to this time the Tool Company had made a public statement that [3670] it was considering throwing onto the market its rights to purchase the subordinate debentures which had the effect of very, very seriously unsettling the market.

To my mind the high probability was that this letter which had been written by Mr. Holliday about things which he might have come in and talked with me about, if he were genuine, was a letter designed to put us on the spot, to interfere with the progress of our Boeing program and the financing thereof.

Q. Is that all?

A. That is all I remember at this time.

Q. Do you think you could remember more if you had more time?

A. Additional circumstances might occur to me later. I think that is quite enough to indicate that I had very serious ground for suspicion, and I guess I will have to add one more here that does occur to me at this time, and that is that Defendants' Exhibits 57 contained a statement which I considered to be false and known by Hughes Tool Company to be false, and that is that TWA was under an obligation to acquire the 990 aircraft.

Q. Now, do you think you have had an adequate amount of time to fully describe all the facts and assumptions that

*Tillinghast—Deposition*

underlie your feeling that the proposals [3671] set forth in Defendants' Exhibit 56 were not being submitted in good faith?

A. I think I have recited enough circumstances, Mr. Davis, to provide a very clear and cogent reason for suspecting that this was not a genuine attempt to achieve an appropriate objective, but rather, an attempt to disrupt, divert and delay.

Q. At that time were you concerned with the possibility that the Tool Company might be able to carry out some of these proposals if accepted by TWA, and thereby avoid the necessity of this additional \$150 million, more or less, of the 1961 financing?

A. No. I was not, Mr. Davis. I would have been very happy with any genuine program that would have brought substantial additional equity to TWA.

Q. Did you discuss these suspicions with anyone?

A. I am sure I did.

Q. Can you identify—

A. I am sure I discussed them with Mr. Rowe. I am sure I discussed them with Mr. Reed.

[3672] Q. And those were suspicions that you discussed with them following the receipt of this letter of June 10th?

A. Before and after the receipt of the letter of June 10th.

Q. You mean before you received the letter of June 10th you were suspicious of the lack of good faith of the proposals that might be contained in the letter of June 10th?

A. No, I am not saying that. I am saying that prior to June 10th I was suspicious of the Tool Company's motivations, and what they were seeking to accomplish. Prior to the receipt of this letter I had on several occasions discussed with Mr. Reed and Mr. Rowe and the directors of

*Tillinghast—Deposition*

TWA what the Tool Company seemed to be seeking to accomplish.

I discussed the background against which this letter of June 10th appeared.

Q. And discussing with them what seemed to you the Tool Company was seeking to accomplish, what did you mean by that? The intention to terminate the voting trust?

A. No, the abortion of the Boeing equipment purchase.

[3673] Q. Did you discuss with them your fears or feelings with respect to any possible effort on the part of the Tool Company to terminate the voting trust?

A. If you mean to terminate it as set forth in your letter, your letter of May 16th, to the Securities and Exchange Commission, or May 17th—

Q. I believe you are referring to a May 19th letter, or you may be referring to a May 26th letter.

A. The letter you wrote to the SEC.

Q. May 19th.

A. You referred there to questions as to whether there were circumstances that entitled the Tool Company to terminate the voting trust.

That letter, and that much of the termination of the voting trust was discussed.

If you are talking about the re-financing of the situation, and the termination of the voting trust through refinancing the situation, the answer is that I do not recall ever having discussed that with the directors.

\* \* \* \* \*

[3733] *Examination (Cont'd) by Mr. Davis:*

Q. Mr. Tillinghast, let me refer you to page 3668 of the transcript of your testimony, where you [3739] made an effort to identify the facts or assumptions underlying your

*Tillinghast—Deposition*

conclusion that the proposal made by the Hughes Tool Company was not in good faith. You see at line 21 your statement:

"Mr. Holliday had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest."

I would like you to identify the time, place and the nature of suggestions you made to Mr. Holliday prior to June 10, 1961, that you sit down with him and discuss matters of common interest.

A. I had written him a letter, Mr. Davis—I can't tell you from memory exactly when it was; I would guess it was some time in the early part of May—asking him to come in and sit down and discuss matters of mutual interest.

Q. You have reference to that one letter?

A. Yes. I think that's the only direct communication I had with Mr. Holliday.

Q. Do you have in mind any indirect communications that you had with Mr. Holliday?

A. No, I don't recall any indirect communications.

[3740] Q. So at that point in your testimony you were referring to this one letter which you believe you wrote some time in early May, is that correct?

A. Yes, although I would have to add I guess one other thing to that, Mr. Davis. At some point along in this period, and I can't tell you exactly when it was, I am sure I had one or more conversations with Mr. Reed, during the course of which Mr. Reed said that he thought it would be a good idea if I could find an opportunity to sit down and talk with Mr. Holliday, and I told him that I would very much welcome an opportunity to sit down and talk with Mr. Holliday any time that he was in town and available.

*Tillinghast—Deposition*

Q. That is what you told Mr. Reed?

A. Yes.

Q. Can you identify the occasion or the substance of this letter of early May to Mr. Holliday to which you are referring?

A. As I recall it, Mr. Davis, it was merely what one might call a courtesy letter, saying that I hoped he would come in and sit down and discuss matters of mutual interest. At this point, I don't remember any more about it than that.

【3741】 Q. Do you recall whether or not it was a letter prior to the May 12th date, when you learned that the Tool Company was interested in a public offering?

A. I would think it was probably prior to May 12th, although I am not absolutely certain about it. I think it probably was, yes.

Q. Do you recall the circumstances which made you write such a courtesy letter?

A. No. It was merely that I thought it would be a constructive thing to do, to invite Mr. Holliday, with whom I had not had any chance to talk at all, to come in and get acquainted.

You may recall that—from my prior testimony—that on the 20th of March I had gone down to 380 Madison Avenue for the purpose of meeting some of the directors, principally Mr. Holliday, but Mr. Holliday had suddenly disappeared and wasn't available, and consequently I believe the only time I had even seen Mr. Holliday was when I made a very brief appearance at the directors meeting on the 20th of March, and since he was one of the voting trustees and a director of TWA I thought it would be a very constructive thing to meet him and get 【3742】 acquainted and have a chance to discuss matters of mutual interest, of which obviously there would be many.

*Tillinghast—Deposition*

Q. Why do you say that Mr. Holliday "suddenly disappeared"?

A. Because that is what I was told.

Q. Who told you that?

A. Oh, I can't remember specifically. I think it was Mr. Reed, although I wouldn't be positive. There were many people there on the 20th when I went to TWA. I understood, if I recall, that I was told that he had rather suddenly received a phone call and he had to go somewhere to take the phone call.

Q. I don't understand what you mean by saying that someone told you that he received a phone call and he suddenly had to take the phone call.

A. That is what I was told.

Q. Who, Mr. Reed, only Mr. Reed?

A. Mr. Davis, I wouldn't be positive who told me that. I think it was probably Mr. Reed, but there were a number of people there on that date, and I wouldn't want to say positively it was Mr. Reed.

Q. At this point, Mr. Tillinghast, I am interested [3743] in discovering your descriptive tendencies, and I would appreciate it if you would make as much of an effort as you can to describe what facts, what events, or what you were told, that caused you to describe the failure of Mr. Holliday to meet with you as a sudden disappearance.

A. Well, merely that I had been called to come down to 380 Madison Avenue, as I recall it, about 11 o'clock, to meet some of the directors, and particularly Mr. Holliday, and I got down there, Mr. Holliday never showed up, and I was told that he had received a phone call and suddenly had to leave to take—apparently to take a phone call.

Q. Do you think it is rather unusual to have to suddenly take a phone call?

A. I didn't say it was unusual, Mr. Davis.

*Tillinghast—Deposition*

Q. Then when you said a moment ago that Mr. Holliday suddenly had to disappear, you didn't think it was anything unusual?

A. Well, I thought it was a little unusual that he didn't show up at all when I had gone down there for the purpose, among others, of meeting him, but I didn't—I knew nothing in particular of the circumstances.

【3744】 Q. I have been noting, Mr. Tillinghast, in your testimony, that when you report discussions that you have had with respect to some of these matters you recall conversations with Mr. Reed and Mr. Rowe, two attorneys, and you never refer to Mr. Breed or Mr. Sessel or any of the other directors. Is that deliberate on your part?

Mr. Sonnett: I object to the form of that question. It misstates the record.

It is argumentative and incorrect in fact from what the witness' testimony has been.

The Special Master: I don't think it advances the examination, Mr. Davis.

Mr. Davis: I am trying to find out, Mr. Special Master, whether or not this witness recognizes a conscious effort on his part to avoid referring to conversations he may have had with others than lawyers.

The Special Master: I think that if the record shows, the further record, shows that he does that, whether conscious or otherwise, you can draw what inferences are proper at the time it is presented.

The Witness: Mr. Davis, let me say, 【3745】 since you have raised this question, that it was Mr. Reed who called me on the telephone and asked me to come down, and it was Mr. Reed who was sort of showing me around.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Mr. Holliday did attend a meeting of the board of directors on May 17th, did he not?

A. Yes, part of it.

Q. Do you recall if prior to that board meeting he had a private conversation with you [or] Mr. Breech?

A. No, he did not.

Q. Do you know whether he had a private conversation with Mr. Breech prior to that time?

A. Not that I recall. Quite possibly he did, but I don't recall it.

Q. When you saw Mr. Holliday on May 17th, that was not the first time you had seen Mr. Holliday, was it?

A. As I recall it, that was the second time; Mr. Davis I think the first time I saw Mr. Holliday was at the board meeting on the 20th of March, at which I had appeared very briefly and been introduced to a whole group of people, including Mr. Holliday, and I believe the next time I saw Mr. Holliday was [3746] at the board meeting to which you have just referred.

Q. Referring to your testimony at page 3668, you say that "Mr. Holliday had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest." That is your testimony there, Mr. Tillinghast?

A. Yes.

Q. Does this refer to the facts that you have described, your going to this board meeting on March 20th, meeting Mr. Holliday there, Mr. Holliday's sudden disappearance, and your not seeing Mr. Holliday again until May 17?

Mr. Sonnett: Plus the letter that was written, and if you are going to summarize the testimony, summarize it accurately.

*Tillinghast—Deposition*

Q. What you have testified to date in its entirety, Mr. Tillinghast, that is what you mean by saying that Mr. Holliday "had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest," is that correct?

A. Well, let me say, Mr. Davis, beginnng with the 20th of March, which I have just described, and continuing then up until the time in June, the [3747] only times that I had seen Mr. Holliday, that Mr. Holliday had, to my knowledge, appeared at TWA, that Mr. Holliday had come to a directors meeting or stockholders meeting, was the occasion when he came to the meeting of May 17th, the circumstances of which have been covered, as I recall it, rather completely in the record.

Mr. Holliday had, at least as far as I was aware, indicated no interest whatever in coming in and discussing common problems. He had, let's say, been completely absent from the scene, and I could only assume that his absence from the scene was not accidental, but was due to a desire on his part, which, of course, was his prerogative, not to come in and sit down and become acquainted and seek, in a constructive way, to deal with our common problems.

Q. You met the board at the meeting held in March, which was March 20th?

A. That's correct.

Q. The next board meeting was the one which was held on April 27th?

A. That's right.

Q. The next meeting of the board after that was the one on May 17th?

[3748] A. That's right.

Q. And you actually took office when?

A. The 17th of April.

*Tillinghast—Deposition*

Q. April 17th?

A. Right.

Q. So that by June 10th you concluded that Mr. Holliday had been completely unavailable and unresponsive to your suggestion that you might sit down and discuss matters of common interest?

A. That was my view, yes.

Q. That is one of the matters which made you feel that this letter of June 10th was probably not sent in good faith?

A. That's correct, Mr. Davis, and I would want, if I may, to state further in that connection that it is my view that if Hughes Tool Company had had a real interest in a constructive solution to some of the problems that the most natural and proper thing in the world would have been for Mr. Holliday, who was a voting trustee and director of TWA, to come in, sit down, discuss the problem, try to deal with it as sensibly and dispassionately as possible.

■3749] When I received the letter in Mr. Holliday's name on a very complicated subject, which letter I am quite confident you prepared, suggesting that conversations be carried on not with Mr. Holliday but with yourself, it seemed to me that this was obviously a maneuver, a tactical move in a controversy rather than a genuine attempt to come to a solution to these problems and to accomplish the things that the letter tried to create the impression it was the purpose to accomplish.

Q. Prior to this meeting of May 17th do you recall the efforts of Mr. Holliday to sit down with you and Mr. Breech to discuss this public offering that the Tool Company was desirous of making?

A. No, I don't remember any attempts to sit down with me, Mr. Davis, at all.

Q. Were you unaware of the efforts made by Mr. Holliday, Mr. Bantzer, together with Mr. Forrester of Merrill

*Tillinghast—Deposition*

Lynch, to sit down with you and Mr. Breech for the purpose of discussing the secondary offering?

A. I have no recollection of any attempt by Mr. Holliday or Mr. Bautzer to sit down with me. If Mr. Holliday had wanted to sit down with me my door would have been open to him any day he wanted to come in.

Q. You made no effort to contact Mr. Holliday [3750] except that one letter?

A. That's correct, other than what I testified before, my agreeing with Mr. Reed that I thought it would be a desirable thing to find an occasion to sit down with Mr. Holliday.

Q. Now let me refer you to page 3669 of the transcript of your testimony, Mr. Tillinghast, and you see at line 19 you said:

"Hughes Tool Company showed no interest whatever in following up on our proffered cooperation for a secondary offering . . . , et cetera.

All I want at this time is for you to first identify what you refer to as your "proffered cooperation for a secondary offering." What are you referring to?

A. Well, I am referring to the fact that the first time I discussed this with Mr. Forrester I assured him that we would give every cooperation to the Tool Company and Merrill Lynch in any secondary offering that they might want to carry out. At the board meeting on the 17th of May the board formally took that position, and it is my recollection that whenever and whatever form the question came up, we said "We are ready to give you every cooperation that you want in [3751] effecting a secondary offering."

Q. Let's see if we can identify some facts, Mr. Tilling-

*Tillinghast—Deposition*

You say that statements were made to Mr. Forrester?

A. That's correct.

Q. Do you know by whom?

A. By me.

Q. Those were statements to the effect that in the future TWA would cooperate with Merrill Lynch in connection with any public offering of these income debentures that the Tool Company might receive?

A. Not in the future, at least in the sense that I think you are using it, Mr. Davis. Right now, and so far into the future as they might wish it.

Q. Would you describe or identify what you said to Mr. Forrester that makes you testify that you told him that TWA was prepared to cooperate "right now"?

A. Well, the conversation at the meeting on the 12th of May included a discussion of the possibility and the ease of stickering the prospectus and having a secondary offering right on the heels of the offering to shareholders, and as I recall it, it was principally the lawyers who were discussing the mechanics of it, [3752] but I personally told Mr. Forrester that we would give them every cooperation that they might want in such an offering if they were interested in proceeding.

Q. Were you referring to cooperation for an offering that would come right on the heels of the TWA offering, or were you referring to cooperation that would develop right on the heels of the 1961 financing?

A. I was talking about one that would come right on the heels of the rights offering of the subordinated debentures.

Q. At that time, though, you were claiming, were you not, it was your position, that this rights offering by TWA could not be delayed or postponed because it jeopardized the 1961 financing?

*Tillinghast—Deposition*

A. It was.

Q. So weren't you telling Mr. Forrester, in effect, that the cooperation you were prepared to give was only to follow the 1961 financing? That is the reason why you were not willing to delay it otherwise, isn't it?

A. No, Mr. Davis, that is quite wrong. So far as I recall, an offering, secondary offering by the Tool Company, so long as it didn't delay the offering of our [3753] subordinate debentures, wouldn't have been any problem at all in connection with the 1961 financing. The two things could have gone along simultaneously without any problem whatsoever.

Q. What was the problem in having the TWA offering simultaneously with the Tool Company's offering?

A. The problem was simply this, Mr. Davis, one of delay, and I have been over this time and time again—

Q. Delay of what, Mr. Tillinghast?

A. The delay of the completion of our offering of the subordinate debentures and the possible effect of that on the firming up of our 1961 financing, concerning which I have testified already at the greatest of length.

Q. Still referring you to page 3669, the bottom of that page, you state, as one of the facts which made you feel that the Tool Company's offer of June 10th was not made in good faith, that "The Tool Company had made a public statement that it was considering throwing on the market its rights to purchase the subordinate debentures which had the effect of very, very seriously unsettling the market."

What public statement of the Tool Company are you referring to, Mr. Tillinghast?

[3754] A. As I recall it, Mr. Davis—I am a little fuzzy as to the detail—the Tool Company made a statement I believe to the Stock Exchange—

*Tillinghast—Deposition*

Q. I think you are right.

A. (Continuing)—that it might sell all or part of its rights.

Q. What else do you know about the events relating to the statement made by Hughes Tool Company to the New York Stock Exchange?

A. I am not sure, Mr. Davis, that I know much beyond that.

Q. Do you know whether or not TWA had made an effort to obtain trading prices on the New York Stock Exchange with respect to those rights?

A. Yes, I know that we made an attempt, and we did list them for trading.

Q. Don't you know as a fact that the New York Stock Exchange insisted that the Tool Company make a statement to the Exchange as to its intention with respect to the very substantial amount of rights it was to receive as a condition to the granting of trading prices on the Exchange?

A. I think that is very possible, yes. I think that's correct.

【3755】 Q. It is more than possible; you were told that, were you not?

A. Well, I am not sure I was told that, Mr. Davis, but I think that's correct, yes.

Q. Your testimony at the bottom of page 3669 refers to the statement made by Hughes Tool Company to the New York Stock Exchange pursuant to their request, is that correct?

A. That's right.

Q. Is that correct?

A. That's correct.

*Tillinghast—Deposition*

Q. That is one of the facts that you consider indicated the probable lack of good faith by Hughes Tool Company when it made its offer of June 10th?

A. Yes, the fact that the Hughes Tool Company gave the impression that it might sell its rights when in fact it didn't, and I suspected never had any intention of doing so.

Q. What is the basis for your "suspecting that it never had any intention of selling any of its rights"?

A. Well, I am not sure, other than just a conclusion that I came to in the light of all the circumstances that existed at the time.

Q. What circumstances existed at the time which led [3756] you to that conclusion, Mr. Tillinghast?

A. Well, Mr. Davis, I would have to go back and repeat everything I have testified to as to the things that had been happening.

Q. No, Mr. Tillinghast, I don't think it is necessary to do that. I am merely asking you to identify the facts or circumstances which made you conclude that the Tool Company had no intention of selling any of its rights.

Mr. Sonnett: Mr. Rankin, may I object to the question unless it is understood that the witness is being asked only if there is any fact or circumstance which he has not previously testified to which bears on the question. He has just said everything that happened up to that date was what he based his conclusion on.

Mr. Davis: No, Mr. Rankin, I don't think that that would be satisfactory for me. This witness, who presumably understands how to reach a conclusion like a rational person, has just testified that in his opinion he reached a conclusion that the statement made by the Hughes Tool Company to the New York

*Tillinghast—Deposition*

Stock Exchange was false or misleading, and that in fact the Tool Company [3757] did not have any intention to sell any of those rights.

I believe I am entitled to discover at this point what facts or circumstances, which facts and circumstances, this witness is relying upon, what he has been told by anyone, what he believed to be true, which justifies such a conclusion.

Mr. Sonnett: He has already testified everything that happened up to that time is what he based his conclusion on. Does Mr. Davis want an argument, or does he want information?

The Special Master: Mr. Davis, you are not asking for a repetition of his testimony up to date, are you?

Mr. Davis: No, I am not asking him for repetition of testimony up to date, but I want him to identify, without repeating, whatever fact it is that he claims supported his conclusion as a rational human being.

The Witness: Mr.—

Mr. Sonnett: Just a minute, Mr. Tillinghast. I think that makes it perfectly obvious that what counsel is trying to do is argue. He is not engaged in discovery.

[3758] He wants to argue with the witness. The witness has said that all of the facts concerning which he has fully testified are what led him to his conclusion.

Mr. Davis would like to sit and waste time here debating that, and I don't think it is proper as to form, and I am certainly clear that under no circumstances should he be allowed to waste time by requiring the witness to testify as to all events that

*Tillinghast—Deposition*

preceded the formulation of this conclusion, concerning which he has fully testified.

**The Special Master:** The witness may answer as to anything additional, if there is anything that he has not already testified to, as the basis for his conclusion.

**The Witness:** I would say in addition to what I have already testified to, Mr. Special Master, the one thing I might say is that in fact the Hughes Tool Company hadn't taken any steps actually to sell its rights, did not take any steps actually to sell its rights, and the fact that I was under the impression that the Hughes Tool Company was not likely, at that point, to dilute its percentage interest.

[3759] **By Mr. Davis:**

**Q.** What were the facts that gave you the impression that the Tool Company was not likely to dilute its percentage interest?

**A.** As best I can recall, Mr. Davis, a conversation with Mr. Leslie. I recall, and it is not very sharp in my mind, that Mr. Leslie—that I discussed briefly with Mr. Leslie the question of whether he thought the Tool Company actually would sell their rights, and he expressed a negative opinion.

**Q.** You said that the Tool Company took no steps to sell its rights. Are you aware of the effort that was made by the Tool Company to get the voting trustees to transfer the rights from the voting trustees to the Tool Company so they could be saleable?

**A.** Not at the moment.

**Q.** You mean Mr. Rowe did not tell you, Mr. Reed did not tell you, no one told you, that the Tool Company wrote

*Tillinghast—Deposition*

letters, made an effort to have the rights which were issued to the stockholders of record, namely, the voting trustees, transferred to the Tool Company?

A. I don't remember any problem of that sort, Mr. Davis.

[3760] Q. I am not talking about a problem. I am asking you if you do not know that in fact it was done.

A. You mean that the rights were transferred so that they would be saleable?

Q. That the Tool Company requested the voting trustees to transfer the rights to the Tool Company.

A. Mr. Davis, I don't distinctly recall it. I do recall that there was some question of getting the rights in the right name, but I don't—it doesn't stick clearly in my mind as to just what the problem was, and I don't recognize it in terms of what you say.

Q. In what terms do you recognize it?

A. Well, it is very fuzzy in my mind, but I do remember that there was some problem—I thought it was the other way around—that the voting trustees had in getting some transfer or—in getting the Hughes Tool Company to transfer something so as to put them in a position so that these could be listed with the Stock Exchange. I am sorry. It is very fuzzy in my mind. I can't remember just what it was. But I remember there was a—some problem of that sort. But I don't recognize the problem that you apparently are referring to now.

Q. Mr. Tillinghast, don't you know to whom the [3761] rights were issued?

A. The rights were issued to the voting trustees.

Q. Because they were the stockholders of record?

A. That's right.

*Tillinghast—Deposition*

Q. Until the voting trustees transferred those rights from themselves to the Tool Company the Tool Company could not sell them, could it? Isn't that self-evident to you?

A. Well, I am not sure, Mr. Davis, whether that is so or not. I don't know just what steps would have to be gone through in order to put the Tool Company in a position to sell them.

Mr. Davis: In order to permit me to continue with the witness at this point, I would like to refer to this document, Mr. Special Master, but our duplicating facilities haven't caught up with me.

I will have it marked, just this one copy, as Defendants' Exhibit 60.

(Photostatic copy of letter dated May 26, 1961, to New York Stock Exchange, from Raymond M. Holliday, consisting of two pages, marked Defendants' Exhibit 60 for identification as of this date.)

■3762] By Mr. Davis:

Q. Defendants' Exhibit 60, Mr. Tillinghast, was produced by you. There is at the lower right-hand corner the following: "May 29, 1961, president's office."

Since I do not have extra copies of this now, let me read that letter into the record.

A. May I look at it?

Q. Certainly (handing to witness).

Mr. Sonnett: That will simplify matters, I think.

Q. You see that letter?

A. I see the letter, yes.

Q. That was in your files, was it not?

A. Apparently, yes.

*Tillinghast—Deposition*

Q. This is a letter by Mr. Holliday to the New York Stock Exchange?

A. Yes.

Q. Can you explain how that letter got into your files?

A. Not at this point, no. I presume somebody sent me a copy of it.

Q. You don't know who?

A. At this point, I don't, Mr. Davis.

■3763■ Q. You notice it is dated May 26th?

A. I do.

Q. You see the second paragraph, which reads:

"This is to inform you that we did not know until approximately 2:30 this afternoon whether we would be able to make arrangements with the voting trustees of TWA common stock beneficially owned by Hughes Tool Company and L. A. Church & Company, the registered holder of the voting trust certificates, to receive these rights."

A. I see that.

Q. You were aware of that then, weren't you, Mr. Tillinghast?

A. I undoubtedly, if this came through my office, read it at that time.

Q. There is no doubt that it went through your office, is there?

A. No, I don't think so, Mr. Davis.

Q. Do you recall the offering period that TWA fixed for the exercise of those rights?

A. As I recall it, it was 15 days.

Q. Are you sure about that?

*Tillinghast—Deposition*

A. No, I am not. I think it was about 15 days. That figure sticks in my mind. But I would have to [3764] check it. It is very easily ascertainable.

Q. Do you also recall whether or not it went over a holiday weekend? Do you know how many trading days there were available for those rights?

A. Well, I am not sure at this point. If the total period was 15—well, I would have to, Mr. Davis, recall, and I don't recall whether the Exchange was open on the 29th of May, which was the day before Memorial Day, or whether it was closed that day, but if it was open that day, there would have been approximately 11.

Q. Is that your recollection?

A. Well, I have no independent recollection, Mr. Davis, just how many trading days—

Q. Do you have any recollection as to whether or not you gave any consideration as to what would be a reasonable or fair or appropriate period of time for those stockholders to trade in those rights?

A. I personally did not, Mr. Davis.

Q. Do you know who did?

A. Well, the people who were arranging the offering.

Q. Who are you referring to, Dillon, Read?

A. Dillon, Read, Mr. Leslie, Mr. Rowe, the people [3765] who had this in charge.

Q. And you did not give that matter any personal consideration?

A. No. The matter of the length of the trading period I gave—the period in which to exercise rights, I don't recall I gave any consideration whatever.

Q. At page 3670 of your testimony, Mr. Tillinghast, you testified that as a result of the advice that the Tool Company gave to the New York Stock Exchange pursuant to

*Tillinghast—Deposition*

their request, you say, "Which had the effect of very, very seriously unsettling the market."

You see that?

A. Yes, I do.

Q. Now will you describe the facts which you describe as having had a very, very serious unsettling effect on the market?

A. Well, as I recall it, Mr. Davis, somebody, I think it was Mr. Wadsworth, possibly it may have been Mr. Leslie, but I think it was Mr. Wadsworth, said that they were very concerned about the situation, that people who were making the market in these rights were extremely concerned that the Tool Company might dump great quantities of rights on the market and leave those who were making the market in a very bad position, [3766] and my recollection is that these rights opened at a very substantial value, and by the end of the exercise period had gone to practically nothing, and my impression was that a major cause of this had been the uncertainty as to whether the Tool Company was or wasn't going to dump onto the market a great number of rights.

Mr. Davis: May I have that answer read to me now, please?

The Special Master: You may.

(The answer was read.)

Q. When did this somebody tell you this, Mr. Tillinghast?

A. Well, my recollection is, Mr. Davis, it was at some point after the Tool Company had taken the position that it might sell all or part of its rights.

Q. Some time after May 26th?

A. Yes. It seems to me—

*Tillinghast—Deposition*

Q. That letter to the Exchange was dated May 26th, wasn't it?

Mr. Sonnett: That didn't say you had made a decision. If you had read the balance of the paragraph it would have been clear.

A. Well, at this point, Mr. Davis, I am not [3767] altogether clear whether that is the only letter, or whether there was a subsequent letter.

Q. But it was something said to you during this offering period?

A. That's correct.

Q. You think it was Mr. Wadsworth?

A. I think it was Mr. Wadsworth, but it might have been Mr. Leslie.

Q. Do you recall the occasion for this information?

A. No, I don't recall the occasion. I have been trying to think here exactly what the occasion was, but I don't recall the specific occasion.

Q. Do you recall his saying something about the length of the offering period in connection with this problem?

A. No, I do not.

Q. Who were the people "making a market in those rights"?

A. I can't tell you who the specific people were.

Q. Describe them for me. What did Mr. Wadsworth or that somebody tell you?

A. I don't think he told me anything, other than to refer to them as the people making the market in the rights.

[3768] Q. Do you know of a very substantial number of rights that were "sold on the market" by the Dreyfus Fund?

A. No, I am not familiar with that.

*Tillinghast—Deposition*

Q. Do you identify that sale as marking the moment from which those rights began to drop in market price fairly rapidly?

A. I am not familiar with that, Mr. Davis.

Q. Did Mr. Wadsworth discuss with you the problem that is inherent when a very substantial amount of securities have to be disposed of in a relatively very short period of time?

A. Not in this connection.

Q. What do you recall about what was said to you apart from these conclusions that somebody told you that some people, unidentified, were making a market and were concerned?

Mr. Sonnett: I think this is obviously argumentative.

If he wants to know whether the witness recalls anything more than he has testified to he can ask it.

Mr. Davis: Mr. Special Master, may I point out that this complaint specifically alleges that [3769] the Tool Company interfered with the subordinated debenture offering.

The Special Master: I overrule the objection. He has a right to ask whatever he was told, what he can recall about it.

Mr. Sonnett: I have no problem with that, Mr. Rankin, but I thought the witness already testified to that once, or several times. It calls for a repetition of that. It would be the third time.

The Special Master: If there is anything further—

The Witness: There is nothing further that I recall at this time.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Is that the entire testimony you care to give as a basis for your testimony that this had the effect of very, very seriously unsettling the market?

A. Yes.

I have testified, Mr. Davis, as fully as I can recall as to the circumstances relating to the unsettling of the subordinate debenture—

Q. In other words, what you have testified to is your complete testimony as to all the facts and [3770] circumstances which justify or support your testimony at the bottom of page 3669 and the top of 3670?

Mr. Sonnett: If that question is to be understood by its literal meaning, I have no objection to it.

If Mr. Davis is trying to exclude the witness' testimony as to all the prior history in this question, I do object. It is argumentative.

The Special Master: We have a right to assume the question shall be taken literally unless it is otherwise directed.

The Witness: Excuse me. Would you read back the page reference? I just want to be sure.

(The question was read.)

A. Yes, Mr. Davis, I have testified to everything that I can presently recall that bears on the statement contained or the statement referred to in your question.

[3771] Q. You testified, Mr. Tillinghast, that these rights opened strong?

A. Yes.

Q. And then weakened in price?

A. Yes.

*Tillinghast—Deposition*

Q. Fairly suddenly?

A. Well, rather steeply, as I recall it.

Q. You also testified that to your knowledge the Tool Company made no effort to sell any of those rights, is that correct?

A. That's correct.

Q. Is it also a fact, Mr. Tillinghast, that when those rights opened on the New York Stock Exchange the public statement to which you referred had already been made by the Tool Company?

A. That is not my recollection, Mr. Davis.

Q. Isn't it a fact, Mr. Tillinghast, that the New York Stock Exchange insisted on a statement by the Tool Company before they would admit the rights to trading? You testified to that a moment ago, didn't you?

A. Mr. Davis, I am just not sure of that. My recollection, and maybe I am wrong in my time, but my recollection is that it was somewhere in the—[3772] during the rights period that I, at least, became aware that the Tool Company had taken this position.

Q. You are quite right about during the period of the rights period, Mr. Tillinghast. We are talking about the trading, the market price of those rights, which is not the same period.

Isn't it a fact that there was a delay between the opening of the rights period and obtaining trading privileges on the New York Stock Exchange?

A. I just have to say I don't remember, Mr. Davis. The facts will show what the situation was.

Q. I am trying to establish the facts, Mr. Tillinghast.

Mr. Sonnett: The witness has said he doesn't remember. I think if counsel has a question he ought to put it.

*Tillinghast—Deposition*

The Special Master: Yes.

Mr. Davis: I am trying to save time, Mr. Special Master, because, to be sure, I can establish those facts in a lengthy, laborious manner, which would be simplified if the witness could be jogged memory-wise so as to admit a fact which admittedly is relatively easily provable, except I need it as a foundation.

【3773】 The Special Master: I will let you exhaust his recollection, Mr. Davis, but when he says he doesn't recollect, unless you can give him something to refresh his memory, then we reach the end of the road.

By Mr. Davis:

Q. Let me refer you to—

Mr. Bromley: It would help me a great deal, Mr. Special Master, if Mr. Davis will tell me whether the public statement by Toolco that he keeps referring to is Exhibit 60 or something else.

Mr. Davis: I am referring to the testimony of Mr. Tillinghast, Judge Bromley, which appears at the bottom of page 3669 of the transcript.

Mr. Bromley: You keep referring to Toolco's public statement. What is that?

Mr. Davis: That is what the witness testified to, and he has testified to a statement made by the Tool Company to the New York Stock Exchange. That is the testimony so far.

The Special Master: Is that clear, Judge?

Mr. Bromley: No.

The Special Master: Look at page 3669, 【3774】 the bottom of the page there.

*Tillinghast—Deposition*

Mr. Bromley: All I wanted to do was to get the Toolco public statement. I know what the witness said.

Mr. Davis: If you will look at the letter that I have marked for identification as Defendants' Exhibit 60, Judge Bromley—

Mr. Bromley: I have looked at it, Mister, and all I asked you was is that the public statement that you keep referring to.

Mr. Davis: I am referring to the public statement that the witness is referring to.

Mr. Bromley: Then you are not referring to Exhibit 60!

Mr. Davis: We are trying to establish what the witness is referring to.

Mr. Bromley: Exhibit 60 doesn't say anything like you say it does.

Mr. Davis: The witness has testified, as I recall it—I will establish it on the record again, if you please.

By Mr. Davis:

Q. At the bottom of page 3669, you testified to a public statement, and my question to you now, Mr. [3775] Tillinghast, is whether or not you were referring to the statement made by the Hughes Tool Company to the New York Stock Exchange, or are you referring to something else?

A. Well, I am referring, Mr. Davis, I think, to a statement that appeared—

Mr. Sonnett: Off the record.

(Discussion off the record.)

*Tillinghast—Deposition*

Mr. Davis: Where are we?

(The record was read.)

A. (Continuing)—in the wire services, and perhaps in the press, that was based on the statement made by the Hughes Tool Company to the New York Stock Exchange.

Q. Is it your understanding, Mr. Tillinghast, it was that statement to the New York Stock Exchange which appeared subsequently in the press which the Exchange required as a condition to permitting trading in the rights?

A. I am not altogether clear, Mr. Davis, whether or not this statement was a statement required by the New York Stock Exchange. I think it very likely was, but I am not sure.

Q. In any event, you were informed, were you [3776] not, that in order to permit the rights to be traded on the Exchange it was necessary for the Tool Company to make a statement of some kind to the Exchange?

A. I am not sure that I was advised of that. Very possibly I was, but I can't remember any specific advice at this point.

Q. Are you clear that the trading of those rights on the Exchange is an event which occurred after the beginning of the rights period?

A. I am not clear at this point as to these dates, Mr. Davis. They are very easily established, but I don't at this point have them in mind.

Mr. Sonnett: While we are waiting, Mr. Rankin, for Mr. Davis to commence his next question, may I inquire through you whether the Hughes Tool Company has produced in the production which commenced March 15th any and all copies of drafts and/

*Tillinghast—Deposition*

or actual press releases or statements to the press on the subject Mr. Davis is now examining about?

I see, for example, in one of these clippings, the Kansas City Star of June 2nd, a statement that the Hughes Tool Company, which [3777] will receive the stamped rights, has notified the Stock Exchange that it intends to sell the rights it received up to an amount which will depend on market conditions but in an amount not to exceed 85 per cent of its holdings.

I would like to know whether they have produced any statements they made to the press in this connection. We can save an awful lot of time if they have.

The Special Master: Mr. Davis, do you know whether that has been produced?

Mr. Davis: I am quite confident that there are no press releases with respect to the subject matter we are now discussing, because this was handled through my office, and I think I can satisfy the inquiry, really Judge Bromley's inquiry, by marking and producing at this time the letter by the Hughes Tool Company to the New York Stock Exchange which released the publicity. I can state on the record the Hughes Tool Company did not issue any publicity whatever with respect to its intentions as to these rights.

Mr. Sonnett: Did its public relations [3778] representatives do so?

Mr. Davis: No, no one.

Mr. Sonnett: I notice the press quotes a public relations representative who apparently was informing the press about Mr. Davis' views on various subjects.

Mr. Davis: You are making a statement which I do not believe is accurate.

*Tillinghast—Deposition*

Mr. Sonnett: You should read the newspapers—

Mr. Davis: I know, but I am not like Mr. Tillinghast, Mr. Sonnett.

Mr. Sonnett: Much to my regret, I suspect to many others, that you are not.

Mr. Davis: I deal in facts, Mr. Sonnett.

Mr. Sonnett: Good. Let's start.

Mr. Davis: Will you mark this as Defendants' Exhibit 61.

(Copy of letter dated May 31, 1961, to New York Stock Exchange, from Hughes Tool Company, marked Defendants' Exhibit 61 for identification, as of this date.)

Mr. Davis: If we may take the morning recess now, I may have both this exhibit and the [3779] other one reproduced, and we will—

The Special Master: All right. Let's take a short recess.

(Whereupon, a short recess was taken.)

Mr. Davis: While we are waiting for more reproduction to take place, Mr. Special Master, it is my recollection that yesterday Mr. Sonnett, in connection with the production of documents from Mr. Breech's files, also produced a list of documents which had been withdrawn on the ground that privilege was being asserted. As I understand it, it was a privilege being asserted by counsel for Mr. Breech.

The Special Master: That was my understanding.

Mr. Davis: We don't seem to be able to locate that document. I believe it was produced as one sheet and was to be reproduced by somebody.

*Tillinghast—Deposition*

Mr. Sonnett: I am sure we can get you another copy. Had Mr. Cox asked Mr. Ordover, you would have had it, and saved a page of the record.

Mr. Davis: It was marked, as I recall, as an exhibit, and I was wondering if perhaps [3780] the Special Master picked it up.

The Special Master: I could have.

Mr. Davis: Or perhaps Mr. Tillinghast.

The Witness: No, I did not.

Mr. Davis: Thank you. I have just been handed a photostatic copy.

The Special Master: I have these, but those don't seem to be what you are talking about (handing to counsel).

Mr. Davis: No (handing to Special Master).

Mr. Special Master, prior to the recess I made a statement on the record that the Hughes Tool Company had not issued any publicity with respect to its intentions as to the rights. That statement is correct, but requires additional explanation.

As previously indicated, the letter to the Exchange, dated May 31, 1961, which has been marked as Defendants' Exhibit 61, closed by saying that it "was authorized to release publicity to the above effect."

I was told, and as I recall, that the Exchange had communicated with Mr. Settles, who was then associated with me, and stated that the [3781] Exchange had no facilities for releasing the information to the press, that the information should be released to the public, and Mr. Sessel at that point—

The Witness: Mr. Settles.

Mr. Davis: (Continuing)—Mr. Settles at that point dictated a press release which is entitled

*Tillinghast—Deposition*

"Press Release from Chester C. Davis, Counsel for Hughes Tool Company," and I would like to make that explanation on the record. I would like to mark those for identification, and produce them at this time.

Mark them as Defendants' Exhibits 62A and 62B.

(Photostatic copy of press release from Chester C. Davis, counsel for Hughes Tool Company, as dictated May 31, 1961, marked Defendants' Exhibit 62A for identification, as of this date.)

(Photostatic copy of press release from Chester C. Davis, counsel for Hughes Tool Company as dictated May 31, 1961, marked Defendants' Exhibit 62B for identification, as of this date.)

Mr. Davis: At this point, Mr. Special Master, I have the necessary copies of Defendants' Exhibit 62, which I am making available to opposing [3782] counsel.

I also have at this time additional copies of Defendants' Exhibit 60, which I am making available to opposing counsel.

By Mr. Davis:

Q. Now, Mr. Tillinghast, let me hand you Defendants' Exhibit 61, which is a letter from the Hughes Tool Company to the New York Stock Exchange, and let me hand you Defendants' Exhibit 62A and B, which constitute the statements to the press pursuant to the arrangements made with the New York Stock Exchange, and let me ask you if those are the public statements by Hughes Tool Company which you had in mind and referred to in your testimony begin-

*Tillinghast—Deposition*

ning at the bottom of page 3669 and continuing to the top of page 3670 (handing to witness).

A. Yes, they are, Mr. Davis. If you had disclosed these before we would have saved an awful lot of time.

Mr. Davis: Mr. Special Master, I don't appreciate that remark by the witness. After all, he is the one who is testifying, and presumably who knows what is the factual basis for his wholly unwarranted assertions that the Hughes Tool Company was not acting in good faith.

[3783] Mr. Sonnett: Can we get on with the deposition, Mr. Rankin? I appreciate, in behalf of TWA, the production of these documents now.

May I ask, since Mr. Davis has seen fit to produce them now, that any other statements to the press put out by his office like these also be produced at their early convenience.

The Special Master: I assume that has been done in the production, so far as they are known.

With regard to the witness' remarks, the questions were inquiries as to his recollection, and there is no obligation on the part of counsel to furnish information to him to try to have him recall. Insofar as you can produce anything that may help his recollection, when we reach the end of his recollection, it does help us to advance the depositions. But you have a right to do that as you progress with your examination in your own manner.

Mr. Davis: May I point out also, Mr. Special Master, that these documents—I will withdraw the remark.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Mr. Tillinghast, will you now please tell us [3784] when the material reflected by Defendants' Exhibits 61 and 62A and B first came to your attention?

A. I don't recall, Mr. Davis, that I have ever seen 62A and 62B before.

I believe I have seen or at least been aware of the existence of Exhibit 61. I am reasonably certain that the fact that such a letter had been written came to my attention within a day or two of the time it was written.

Q. In other words, you have a recollection that the letter by the Hughes Tool Company to the New York Stock Exchange came to your attention, or the substance of it?

A. The fact that the Hughes Tool Company had made the statement which is embodied in Exhibit 61 came to my attention very shortly after it was made.

Q. But referring to Defendants' Exhibit 62A and 62B, you never saw those before, did you?

A. I have no recollection of having seen them before, Mr. Davis.

Q. Now will you explain what were the public statements which you had in mind on June 10, 1961, which led you to conclude that those public statements justified a conclusion that the Tool Company was not [3785] acting in good faith?

A. Well, I am not sure, Mr. Davis, where the date June 10th comes from in your question. If your question refers to the period from June 12th, when I received your letter of June 10th, to June 16th, when I answered it, I would say the substance of May—of the letter of May 31, 1961, Defendants' Exhibit 61, and the publicity in the press and the wire services springing from that, were the circumstances which I had in mind.

*Tillinghast—Deposition*

Q. Will you identify, either by referring to Defendants' Exhibit 62A or 62B, or from the publicity which you recall having seen, the part or portions thereof which led you to conclude that those were public statements not made in good faith?

A. Well, I don't refer—strike that.

I don't come to the conclusion—to that conclusion just within the four corners of the document, Mr. Davis. The statement to which I refer is a statement that Hughes Tool Company intends to sell rights received by it up to an amount which under no circumstances will exceed 85 per cent of such rights.

Q. Yes?

[3786] A. That is the statement to which I refer. The fact that they weren't offered, and the other many facts to which I have already testified, were what led me to conclude that this was a statement not made in good faith.

Mr. Sonnett: If that is the end of the answer, and before there is another question, and in the interests of avoiding any confusion, may I ask, Mr. Davis, whether the reference in Exhibit 62A in the first two lines, reading, "The following is an excerpt of a letter to the New York Stock Exchange from the Hughes Tool Company," is a reference to the letter a copy of which is Exhibit 61, or is there some other letter?

Mr. Davis: My recollection of the events, Mr. Sonnett, if it will assist you in any way, is that Mr. Settles originally sent a letter to the New York Stock Exchange for the purpose of permitting the issuance by the Exchange of whatever publicity was required or they deemed desirable, and then he was informed they did not have the facilities, could not do it themselves, and expected that information to be [3787]

*Tillinghast—Deposition*

made available to the press directly, and that is what Mr. Settles did.

I do not know at the moment of any other letter to the Exchange by my office on this subject other than the ones which I have marked for identification.

Mr. Sonnett: May I invite to the attention of the Special Master, because I am loath to make such grave charges until the record is perfectly clear, that on the basis of the statement that counsel has just made the press release is a false release.

If the Special Master will look at the second and last sentence in the second paragraph of Exhibit 61, and look at what is represented in the press release to be a copy of that sentence, the Special Master will note a highly material change. So the statement in the press release that the following is an excerpt of a letter to the New York Stock Exchange from the Hughes Tool Company is false, and I think the record ought to reflect that fact here and now.

Mr. Davis: The statement of Mr. Sonnett, as usual is not completely accurate, but [3788] whenever it is the turn for Mr. Sonnett or TWA to establish any facts that they care to establish, I would have no objection to their doing so.

At the moment I do object, Mr. Special Master, to this continuous interference with my efforts to discover the facts that I wish to develop.

I have attempted to cooperate, primarily because of suggestions made by the Special Master, in furnishing information to TWA and its counsel out of turn. But it is perfectly apparent that counsel for TWA is either trying to establish precedence or a course of conduct which I consider as materially in-

*Tillinghast—Deposition*

terfering with the efforts of the Tool Company to conduct its discovery proceedings in an orderly manner.

【3789】 The Special Master: Mr. Davis, I think the remarks at this point may be well taken in light of that language. I am not saying it was intentional, but it says Hughes Tool Company does, however, intend to make such an offering in the press release, and the letter says intends to consider the desirability. I think that is the point that is being raised.

Mr. Davis: The point I am raising, Mr. Special Master, let us assume for the purpose of this discussion that something very wrong has been done by the Hughes Tool Company, my point is that the time to develop those facts is not now. This is not the time where TWA is attempting to discover what took place or did not take place to support their contentions. This is the time when I am trying to discover the facts from TWA.

This is a contention which undoubtedly requires an explanation. But my point is that if every time TWA or its counsel feels that it is appropriate or helpful to whatever strategy he may be undertaking at a particular time to open up and inquire into what the Tool Company did or did not do it is interfering with my 【3790】 discovery proceedings.

I am not prepared at this time to develop the facts as to what the Tool Company in fact did, other than to develop the facts in the possession of TWA and of this witness with respect to what they did.

I was perfectly willing, in a gesture of cooperation, although I do not believe that I was required to, to identify on the record these documents at this time,

*Tillinghast—Deposition*

leaving aside for the moment the question as to the requirement of producing those documents to TWA for whatever use they wish to make of them when their turn comes.

The point that I am making now, Mr. Rankin, is that if I am going to be required to pursue this I am not pursuing my discovery proceedings.

The Special Master: I think your point is well taken, except for the problem, Mr. Davis, that counsel inquires as to whether there is any other letter that might explain the difference in light of the fact that these are being used to refresh the memory of the witness, insofar as they might refresh—

■3791■ Mr. Davis: Mr. Rankin, again, these were not produced for that purpose.

The witness testified he had never seen them.

They did not come out of TWA's files. If they had been in TWA's files, they were producible, at least to the same extent they were producible out of mine.

Therefore, they are not documents which have been produced for the purpose of refreshing Mr. Tillinghast's memory with respect to what he had in mind at the time about which I was inquiring of him.

They were produced, again, primarily in the expectation that if I did I would no longer have Mr. Sonnett interfering with my deposition.

I thought that was the quick way of doing it.

Now it develops that having done so, he would like to pursue the matter further, and my point simply is that whether or not they were producible or not producible, I have no objection to producing

*Tillinghast—Deposition*

them, they can have them, and they can do with them what they want.

But I am seriously objecting to being [3792] required to pursue lines of inquiry which occur to Mr. Sonnett from time to time.

The Special Master: I recognize the soundness of your objection generally, but I think that the record shows that you did ask the witness if he had any recollection as to these particular documents, and he said he didn't, but you made such an inquiry as to 62A and B, as I recall the record—

Mr. Davis: That's correct.

The Special Master: (Continuing)—and as to 61, he had a recollection that he had actually received a copy, or at least it had been called to his attention, and presumably had a copy in his files. So to that extent you were inquiring into his memory and recollection, and whether or not those documents would refresh his recollection.

Whether or not you knew at the time that he never knew anything about 62A or B, I couldn't tell from the record until the answer was given, and just what approach you were making.

I don't intend to let an interference be made with the proper conduct of your examination. But I think the inquiry at this time as [3793] to whether or not there was some other letter was a reasonable one that would occur to any of us. You don't have to follow that up by supplying such at this time.

Mr. Davis: I have no particular objection to developing the facts, but it seems to me that either we are going to conduct discovery proceedings where each side takes its turn in developing the facts, or we are going to try to develop the facts jointly.

*Tillinghast—Deposition*

**Mr. Sonnett:** I would like to be heard, Mr. Rankin, on the question of the obligation of Hughes Tool Company and its counsel to produce from Mr. Davis' files any statements that he issued to the press or communications of this type.

You inquired yesterday about whether this was a Hughes Tool Company office or a Chester Davis office. We were in this matter of production of documents that might be located here.

I don't know that it is the proper function of counsel to be issuing press releases to the Daily Mirror and the other list of press [3794] associations appearing on Exhibit 62A. But counsel having done so, it seems to me that the documents in question are Hughes Tool documents that should have been produced.

It so happens that 62A and 61 taken together constitute, in my opinion, very significant evidence tending to establish in a very material way an important allegation of TWA's complaint. I should have had that evidence when they produced the documents of Hughes Tool Company, and Mr. Davis shouldn't feed it out piecemeal, whether he is trying to refresh the recollection of a witness or not.

One of two things is true here. Either they made a false statement to the Stock Exchange or they made a false statement to the press of the United States, and I intend to explore that very thoroughly, and I am entitled to have any press releases they put out.

**The Special Master:** You may proceed, Mr. Davis, with your examination of the witness.

*Tillinghast—Deposition*

By Mr. Davis:

Q. Mr. Tillinghast, do you know whether or not—

Mr. Bromley: Wait a minute. Before you [3795] proceed, I think the record ought to show right now, in connection with Mr. Sonnett's remarks, that neither Exhibit 62A nor 62B is a true and correct copy of Exhibit 61. They are quite different, and substantially different.

All you have to do is compare them to find out that the statement in 62A and B is not at all what is said in Exhibit 61.

The Special Master: It doesn't require your speech to establish that fact. Anybody can compare them.

Mr. Bromley: Nobody has compared them, and why should this record go on the assumption that they are accurate quotes when they aren't?

The Special Master: I have already compared them, and said in the record the difference.

Mr. Bromley: Said the difference?

The Special Master: Yes.

Mr. Bromley: You haven't at all, sir.

The Special Master: I am sorry. I beg your pardon. Look in the record.

Mr. Bromley: What?

The Special Master: You look in the record when you receive it.

[3796] Mr. Bromley: You mean you have pointed out the differences, in paragraphs 1 and 2, between 61 and 62A and B?

Mr. Sonnett: May I suggest that I called this to the attention of the Master because this was the

*Tillinghast—Deposition*

point that disturbed me. When I asked Mr. Davis whether there was another letter to the Stock Exchange referred to at the top of 62A other than Exhibit 61, and was informed by Mr. Davis that there was not, I then called attention to the fact that 62A was a false statement, and the Master did consider that, I believe, and disposed of it.

My application was that by reason thereof, and since these are Hughes Tool documents, I be supplied, on behalf of TWA, with any and all press releases issued from Chester Davis' office on behalf of Hughes Tool Company.

Mr. Bromley: Maybe I was asleep, but I thought your only point was in the heading.

The Special Master: The language was recited to the reporter right here. I don't know whether you are hearing what is going on or not, Judge Bromley, but it was recited in detail [3797] by Mr. Sonnett in his objection, and it was recited by me.

Mr. Sonnett: May I—

The Special Master: And I inquired directly to Mr. Davis about it.

Mr. Sonnett: May I, on behalf of TWA, apologize for the low level of my voice. It is true that I have had my back toward Judge Bromley. It is also true that because of fatigue my voice is low. So to the extent that I have contributed to the confusion, I apologize. The fact, however, is very clear, that one of two things is necessarily true. Either a false statement was made to the Stock Exchange on May 31st, or a false statement was made to the press on May 31st, and in any event, a false statement was made to the press on May 31st on a highly material

Tillinghast—Deposition

issue. That was my point, and I want all of the documents which constitute press releases from the office of Chester Davis as counsel for Hughes Tool Company. I think I am entitled to have them.

Mr. Bromley: I must apologize to the Master and to you, because I did not hear either one of you point out the many discrepancies which [3798] occur both in paragraph 1 and paragraph 2.

Mr. Stewart: Mr. Special Master, I believe there are still other discrepancies between the various documents which I believe Mr. Sonnett did not point out. I have reviewed them with Judge Bromley briefly, and there are several inconsistencies between the various exhibits.

I believe Mr. Sonnett mentioned perhaps the principal one.

Mr. Sonnett: One at a time, I always believe in I think the record is pretty clear.

Mr. Davis: Now, Mr. Special Master, may I say that all these statements on the record have taken a great deal of time.

I don't think they furthered the discovery of the facts from this witness.

Mr. Settles, who handled this matter, and who is not now associated with me, will be available at the appropriate time to explain to these interested gentlemen what actually happened, and when they find out what the facts are they will find that, as with their other general accusations, they are baseless.

Mr. Sonnett: I think on the basis of that [3799] statement we are entitled to know right now whether Mr. Davis did or did not approve the press release

*Tillinghast—Deposition*

which is Exhibit 62A and the statement which is 62B at the time.

The Special Master: I will overrule that. Let's proceed with the examination of the witness.

By Mr. Davis:

Q. Mr. Tillinghast, I hope that you haven't forgotten the testimony that you were giving prior to these colloquies from your counsel and others. Have you?

A. No.

Q. My question to you now, so the record may be entirely clear, is whether or not Defendants' Exhibits 62A and 62B came to your attention prior to today.

A. I have already testified to that, Mr. Davis.

Q. Would you mind repeating it, please?

A. Not that I recall.

Q. Would you recall it if it had?

A. Not necessarily.

Q. You say that Defendants' Exhibit 61 came to your attention, you remember that?

A. I said. Mr. Davis, that I either saw 61 or was advised of its contents. I am not absolutely sure [3800] that I have seen 61, but the substance of it is familiar to me.

Q. Do you recall who called it to your attention?

A. No. It may have been that I saw it. It may have been Mr. Leslie, it may have been Mr. Rowe, it possibly might have been Mr. Wadsworth.

Q. You have no recollection as to how a letter to the Exchange came to your attention which is not now included in your files?

A. I have—the only recollection I have is what I have already testified to.

*Tillinghast—Deposition*

Q. Will you identify, on the basis of what you knew in June 1961, the period June 10th to June 16th—what did you know at that time which is the basis for the testimony that you gave at the bottom of page 3669 and the top of page 3670?

A. Mr. Davis, I have testified to that as fully as my recollection permits.

Q. Based upon that testimony, is that the complete basis for your conclusion that that was a fact which you considered as indicating the lack of good faith in the offers made by the Tool Company by its letter of June 10th?

A. I have testified, Mr. Davis, as fully as I [3801] can as to the reasons why I felt this was not in good faith.

Q. I understand that, Mr. Tillinghast, but what I want you to tell me now is whether or not you have now fully disclosed all of the facts that you had in the period June 10th to June 16th to support the answer you gave at page 3669 of the transcript.

A. As far as I can presently recall them, I have.

Q. You believe that if you had some more time you could recall some more?

A. I have no specific reason to think so. I might.

Q. Is there anyone in particular with whom you would like to have an opportunity to discuss the matter so as to refresh your recollection?

Mr. Sonnett: Mr. Rankin, I think counsel ought to be directed to stop this sort of nonsense. He has gone through this exercise a hundred times. It is very naive, improper, and a waste of time. It is about time he stopped arguing with the witness or playing it up to a jury, or whatever he thinks he is doing, and put questions seeking information. This is completely wasteful of time.

*Tillinghast—Deposition*

He is worried about Hughes. Every time he [3802] puts another dollar's worth of this sort of stuff on the record it is costing his client. I think he says 78 cents. I think his client is getting gyped.

The Special Master: Answer the question if there is anyone that you know of that might help you recollect more.

A. Not specifically, Mr. Davis.

As you well know, when one sits down, particularly with a number of people who have been familiar with events, and goes through them, discusses them back and forth, one's recollection is inevitably refreshed, and if I sat down with all the people involved in these events and asked them their recollection, told them mine, perhaps other things would come to mind.

But I have no specific reason to think beyond that any particular person would refresh my recollection.

Q. I am interested in the persons with whom you discussed what you considered to be evidence of the bad faith on the part of the Tool Company with respect to its proposals of June 10th:

Mr. Sonnett: Other than counsel, I assume.

Mr. Davis: Yes, other than counsel.

[3803] Q. I believe, Mr. Tillinghast, being a lawyer, you understand I am not asking you to refer to advice that you received from counsel. You understand that, do you?

A. Well, I didn't understand that, Mr. Davis. But if you tell me so, I will try to remember that.

Q. You were aware, at least in connection with your testimony on the change of the meeting of the board of directors

*Tillinghast—Deposition*

from Chicago to New York, that you were free to protect the attorney-client privilege?

A. I recall that Mr. Sonnett asserted the attorney-client privilege.

Q. You understand that that is a privilege that can be waived by the client?

A. I do.

Mr. Sonnett: You should further understand, Mr. Davis, that Mr. Tillinghast doesn't have the power to waive it even if he were asked to waive it or wanted to waive it.

The power is vested in the Special Committee of the board of directors of TWA, of which Mr. Tillinghast is not a member, and which board has the entire authority of the board of directors with respect to this litigation. So let's get [3804] that settled.

Mr. Davis: But Mr. Special Master, I don't think that we need to have on the record Mr. Sonnett's legal conclusions, however sound or unsound they may be.

The Special Master: Do we have a question before the witness?

(The question was read.)

A. Well, other than counsel, I discussed it with Mr. Reed, I am sure with Mr. Breech, although that discussion doesn't stick particularly in my mind, with Mr. Leslie. Those are the only ones I recall specifically. It is very possible that I discussed it with Mr. Sessel. I think that would be about the sum total of the group.

Q. Mr. Reed is counsel for the voting trustees?

A. Mr. Reed is counsel for the voting trustees.

*Tillinghast—Deposition*

Q. When you discussed it with him you were discussing it with him as counsel for the voting trustees?

A. Yes.

Q. Do you recall the circumstances when you discussed that with him?

A. I have the feeling that I discussed it with him twice, Mr. Davis. The first time was shortly after the [3805] letter was received, and the second time was when the letter was finalized, I, in the interim, having prepared a draft and sent it to him and some others.

Q. Have you located that draft?

A. No, I haven't, Mr. Davis.

Q. Have you located letters of transmittal with respect to that draft?

A. No, and I am inclined to feel that I may have been wrong in recalling that I sent copies of the draft to all of the directors.

I think what I am thinking of is that I sent copies of the final letter to all of the directors, but I understand that there is no transmittal letter in our file, and I am quite sure that if I had in fact sent a draft of this to each of the directors that I would have had a copy—that there would be a copy in our files of the transmittal letter.

Q. Did you perhaps send it merely to a few selected directors?

A. I think that is quite possible.

Q. Will you identify those selected directors to whom you sent a draft of the letter?

A. Well, Mr. Davis, let me make it clear that I cannot say positively to whom I sent it. But I think [3806] I sent it to Mr. Leslie and Mr. Breech.

Q. That is all you can remember?

*Tillinghast—Deposition*

A. That is all that I can remember, and I don't want to be absolutely positive about that. But my best recollection is I sent it to Mr. Leslie and to Mr. Breech.

Q. Is it your recollection that the final copy of the letter was sent to all the directors?

A. Yes. The minutes of the June meeting so recite.

Q. Describe the meeting that you had with Mr. Reed shortly after this June 10th letter, Defendants' Exhibit 56, was received.

A. Well, I didn't say I had a meeting with Mr. Reed. I may have, or I may have talked with him on the telephone. I have a recollection that I talked with Mr. Reed merely about the fact that I was going to prepare a draft of reply, and that the letter seemed more designed to make a record and put the people to whom it was addressed on the spot than it was to achieve any constructive purpose.

Q. That is what you told Mr. Reed?

A. As I recall it, that is what I told Mr. Reed, and what Mr. Reed agreed was the case.

Q. Mr. Reed agreed with your statement?

[3807] A. Yes.

Q. Did he say why, did he give you any facts, any reasons?

A. No, not that I recall, and indeed, I would have thought it obvious enough to him that I wouldn't have asked him, "Why do you think that?"

Q. You thought what was obvious enough to him?

A. That this was a maneuver, a letter for the record, rather than a genuine attempt to achieve something.

Q. And Mr. Reed agreed with you with respect to that also?

A. Not "also." That is what I just testified to.

Q. Was that a long telephone conversation?

*Tillinghast—Deposition*

A. Mr. Davis, as I said before, I am not sure whether it was a telephone conversation or a meeting.

I just remember as much as I have testified to now.

【3808】 Q. Identify the meeting or discussion that you had with Mr. Breech. I am still referring to your statement or conclusion, which was obvious to you, as I gather from your testimony, that the offers reflected by the letter of June 10th were obviously a maneuver, not in good faith?

A. Mr. Davis, I don't specifically recall the conversation that I had with Mr. Breech about this. I am quite sure I had a conversation. My certainty in that regard springs in part from the fact that I am quite sure that I wouldn't have dealt with this without having talked with him. But just what we talked about I don't have a distinct recollection of, and I would be very largely supposing.

Q. By referring to your calendar can you identify whether or not you had a meeting with Mr. Breech during this period?

A. My calendar indicates nothing in this regard, Mr. Davis, but I have a vague recollection of Mr. Breech having been in town at this time. I can't be certain whether I talked with him or whether I—whether I talked with him face-to-face or whether I talked with him on the telephone.

Q. Can you recall the substance of what Mr. Breech 【3809】 said to you?

A. No, I cannot, Mr. Davis. As I said before, I don't have a distinct recollection of a conversation with Mr. Breech about this, although I am quite confident I must have talked with him about it, and I have a vague recollection of his having been in New York and spoken to him about it in New York.

Q. What is it that you recall which makes you feel that you must have talked to Mr. Breech about it?

*Tillinghast—Deposition*

A. As I said before, I am quite sure I wouldn't have dealt with a letter of this sort without having talked with Mr. Breech, and I—this may have been a time when Mr. Breech and Mr. Olds had a meeting at 380 Madison Avenue with, as I recall it, Mr. McCone, who was in town, if it is the occasion I think of, and I talked with him, if that is the occasion, very briefly, and it may be that I mentioned—we discussed this very briefly at that meeting.

Q. Do you remember this meeting between Breech and Olds at 380 Madison Avenue?

A. I remember a meeting that Mr. Breech and Mr. Olds had at 380 Madison Avenue, during part of which, as I recall it, Mr. McCone dropped in, and I was busy with something else, and just went in and talked with [3810] them for a few minutes. I remember they were in Mr. Pierson's room.

Q. Do you know what the purpose of that meeting was?

A. Not at this point, other than to say that my recollection is that they were generally discussing TWA problems or voting trust problems.

Q. When you say you don't remember at this point, did you know at any time what was the purpose of the meeting?

A. I don't think I knew specifically. I knew that Mr. Breech and Mr. Olds were having a meeting. I presumed it was to discuss some of the recent occurrences, and if it was at the time—if I am correct in thinking it was about the 12th of June, I have no doubt that they were discussing all of these things that I have been testifying about.

Q. But you don't recall discussing it with either Mr. Breech or Mr. Olds?

A. Well, my recollection, Mr. Davis, is that—I am quite sure of this—that at that particular meeting I merely made an appearance, oh, for a short period of time, maybe 15

*Tillinghast—Deposition*

minutes, or something of that sort, I was not a participant in the meeting. I think if in fact this was more or less coincidental with the [3811] receipt of your June 10th letter that that is probably the time I discussed it with Mr. Breech.

Q. Assuming that that was probably the time that you discussed it, do you recall the discussion?

A. I don't, Mr. Davis, beyond the fact that I was the one to answer it.

Q. Was that decision that you were the one to answer it a decision arrived at by someone other than yourself alone?

A. Well, I am sure that that was in conversation or that I discussed that particular aspect of it with Mr. Reed and Mr. Rowe. I think probably, again, if I am correct as to this meeting between Mr. Breech and Mr. Olds having been held when I said, or having been held at about the time of the receipt of this letter—I think that is probably the time that I had my initial conversation with Mr. Reed about preparing a draft and circulating it to him on behalf of the voting trustees and some others, and entertaining his comments.

Q. What was the reason for discussing this strategy, or whatever you were discussing, with Mr. Reed? Was it because he was counsel for the voting trustees?

A. Yes.

Q. And also counsel for Mr. Breech individually?

[3812] A. No, I don't know that he was counsel for Mr. Breech individually.

Q. Did you consider that this letter of June 10th which you received was a matter that required discussion with the voting trustees or their counsel?

A. Yes, to the extent that this was addressed to a variety of people, including the voting trustees. It was my

*Tillinghast—Deposition*

view that TWA should answer it because it dealt primarily with questions relating to aircraft and management questions that were proper interests of TWA itself, although not all of the questions were in this category, and as I recall the situation, I said to Mr. Reed that I proposed to reply to it on behalf of TWA, dealing with it on the merits, even though I had the feeling that it wasn't written really to be dealt with on the merits, and he agreed that that was the thing to do.

Q. Do you recall your discussion with Mr. Leslie with respect to the facts that indicated to you or tended to indicate to you that this was not a letter to be dealt with on its merits?

A. I am afraid, Mr. Davis, that you have just reversed my testimony.

The Witness: Do you want to read that back?  
[3813] (The question was read.)

A. I have just testified, Mr. Davis, that I felt that despite the fact that the letter was not written in good faith that we should deal with it on its merits.

Q. What I am inquiring into now, Mr. Tillinghast, are the facts which you had, which came to your attention, or which you discussed with anyone, tending to indicate that the letter was not in good faith.

A. If that is the question you ask, I don't recall anything with respect to Mr. Leslie, except that Mr. Leslie and I discussed the question of whether there was any realism in the condition that the voting trust be terminated, and he expressed the opinion that there wasn't any, in his opinion, serious possibility of that, and I asked him to please communicate with the financing institutions and obtain from them expressions as to whether or not, under the

*Tillinghast—Deposition*

circumstances proposed in this letter, they would consider a termination of the voting trust.

Q. But, Mr. Tillinghast, you keep slipping from the question I am directing to you. At the moment I am not inquiring into the consideration given as to the realism of any possibility or desirability of the basic [3814] terms. I am interested in your statement, in your testimony, to the effect that you believed that the offer made was not made in good faith, and I am asking you to identify the persons with whom you discussed that subject, the existence or lack of existence of good faith.

Mr. Sonnett: May I object to the form of the present question, and ask the Master to direct there be stricken the comment that the witness is slipping from the question.

The record makes perfectly plain that the witness was trying to find the question out of Mr. Davis' various passes at the point, and then said "If that is your question, this is my answer."

I don't think that the record ought to be cluttered with this kind of comment.

The Special Master: The statement the witness is slipping may go out. The rest of it, in which Mr. Davis is trying to make plain the nature of his inquiry, will stay in.

A. Mr. Davis, the only persons with whom I can recall having specifically discussed the question of good faith are Mr. Reed and Mr. Rowe.

Q. Not Mr. Breech?

[3815] A. I have no specific recollection of having discussed it with Mr. Breech, although I have to say to

*Tillinghast—Deposition*

you that it is entirely possible, entirely likely, that I did. But I don't have any specific recollection of it.

Q. With Mr. Leslie?

A. I may have with Mr. Leslie, but again, I have not a specific recollection of it, except as I have already testified, that I know I discussed with him this question of the voting trust and the realism of expecting a quick termination of it, and involved in that discussion, at least implicitly, I am sure was the matter of whether this was a genuine expectation or something being written for the record.

Q. You previously testified that one of the persons with whom you may have discussed this matter was Mr. Sessel?

A. That's correct.

Q. Will you now describe your discussions with Mr. Sessel on the same subject?

A. Well, the only thing, Mr. Davis, I specifically remember having discussed with Mr. Sessel was the matter of the position that the banks would take, and I recall that Mr. Sessel talked with me on the telephone [3816] about it, and said that the banks had taken a uniformly negative position, with the exception of the Bank of America, and he said they took a qualified position which in his view was really no, but he felt that in view of the dual relationship in which they found themselves as bankers for both Hughes Tool and TWA, that they were playing it carefully, and not taking an out-and-out position.

He further stated that in his opinion, if this ever got beyond the preliminary stage, that the Bank of America's position would turn out to be a negative position.

Q. Do you recall where this conversation took place?

A. My recollection is it was a telephone conversation.

Q. You recall that one fairly clearly, do you?

A. For some reason, that sticks in my mind.

*Tillinghast—Deposition*

Q. Did you discuss the probable good faith or lack of good faith in the making of the proposal?

A. I have no distinct recollection of it, Mr. Davis, but I would be quite sure that we did.

Q. You can't recall what he said to you in that regard or what you said to him in that regard?

[3817] A. Not specifically, no, Mr. Davis, but I am quite sure for some reason, and it is undoubtedly conversations that I have had with him, that Mr. Sessel thought that this was purely a maneuver, and he undoubtedly said so, and I undoubtedly agreed with him, but I cannot recall the specific conversation.

Q. Without trying to recall the specific conversation, do you recall any fact advanced or stated to you by Mr. Sessel to support this conclusion?

A. No, I do not, Mr. Davis.

Q. Do you have any recollection of asking him, in substance, "Well, I think the same thing also, but I am interested in knowing what makes you conclude that way"—nothing of the kind took place?

A. No, Mr. Davis, and I would volunteer the comment that I don't recall having asked anyone why he thought this, or having been asked by anyone why he thought this. I think the circumstances made it so apparent that no one labored the point or asked "Why do you think this?"

Q. You say that the persons, then, that you discussed this existence of good faith or lack of good faith with were Mr. Reed and Mr. Rowe?

A. That's correct.

Q. In your discussion with Mr. Rowe you were seeking [3818] legal advice from Mr. Rowe, or were you discussing it because of what knowledge he generally had with respect to the Tool Company?

*Tillinghast—Deposition*

A. I was seeking legal advice in the sense that I was discussing with him the matter of how this letter should be treated and how it should be replied to.

Q. I am referring now to the discussion as to the existence of facts which tend to support your conclusion that the Tool Company was not making these proposals in good faith.

Mr. Sonnett: I think the witness has already testified that he recalls no such discussion with anyone.

Mr. Davis: I believe the record is not to that effect, Mr. Special Master. I believe he said the only people he discussed that with were Mr. Reed and Mr. Rowe.

Mr. Sonnett: No, no. The witness testified a little while ago, when he said he would be bold enough to volunteer, that he recalled no discussion with anybody in which anybody said "My reasons for believing this are thus and so," or "What are your reasons for believing this?" The witness made that very plain.

■3819■ So before you get down a false trail about a discussion with Mr. Rowe, I think the question has already been answered negatively.

The Special Master: That is my recollection of the record, Mr. Davis.

He has constantly been asked, and he said he did discuss with Mr. Reed and Mr. Rowe, but when you got down to any specifics he never recollects.

Mr. Davis: We can satisfy my problem, Mr. Special Master, by merely asking him now.

*Tillinghast—Deposition*

By Mr. Davis:

Q. In your discussions with Mr. Reed and Mr. Rowe did either of them—let's talk of Mr. Rowe alone; I have covered Mr. Reed.

Let me rephrase my question this way: In your discussion with Mr. Rowe did Mr. Rowe advert to any fact or circumstance which confirmed your conclusion that this offer by the Tool Company was not in good faith?

Mr. Sonnett: May I have a moment with Mr. Rowe?

The Special Master: Yes.

(Discussion off the record.)

Mr. Sonnett: Having conferred with Mr. Rowe, [3820] I will not assert, in behalf of TWA, any claim of privilege with respect to this conversation to which the witness refers.

The Special Master: You may answer the question.

A. Mr. Davis, I will repeat once again that I don't recall any specific review of facts and circumstances that led anyone to the conclusion that this was not written in good faith.

I do recall that I discussed with both Mr. Reed and Mr. Rowe the fact that this letter appeared to be written for the record and to put TWA on the spot to serve as a means of impeding the Boeing program, and my recollection is that we all agreed that this was the case, and I have no recollection that anyone went into detail and said "Now, you tell me why it is that you think this is the case."

Q. In your answer, Mr. Tillinghast, you said you don't recall any specific review of the facts and circumstances, and I would be satisfied if you could give me any statement

*Tillinghast—Deposition*

of facts and circumstances, whether or not you would regard it as a specific review.

A. I recall no statement of the facts and circumstances.

Q. Thank you.

【3821】 Now you say that you did discuss with Mr. Rowe and Mr. Reed the fact that this letter appeared to "put TWA on the spot."

Will you describe what you said or they said indicating that this letter would put TWA on the spot?

A. Well, without at the moment distinguishing between Mr. Reed and Mr. Rowe, what I said, in substance, was that I felt this was written for the record, that it was an attempt to create a situation where TWA would seem to be put in the position of refusing to accept a proffer of a very substantial amount of equity unless it interrupted and interfered with its Boeing program, and that it seemed to me just another step in the Davis campaign which had then been going on for some period of time, and that it was not a genuine attempt to work out a basis of additional equity.

I also said, and they agreed, that we had to deal with it as if it were genuine, and had to keep the doors open and the means open by which, if in fact it did turn out to have substance, we would exhaust the matter on its merits.

Q. Did you understand that the only condition to the offer of proposal No. 1 was a termination of the voting trust?

【3822】 A. That was a stated condition. There were obviously a good many other questions involved in it, Mr. Davis. This was not a situation where we just could say "I accept," and we suddenly had a \$100 million of equity. You had inherent in this numerous questions of the form of the equity, the price of the equity, what the terms would be, a dozen things that weren't covered here, but the only

*Tillinghast—Deposition*

specific stated condition was the termination of the voting trust or—and the fact that it be acted upon within ten days or any agreed upon extension thereof.

Q. In this discussion you had with Mr. Rowe and Mr. Reed did they point out to you that if the proposal was acceptable to TWA, TWA would be free to supplement its jet fleet either with Boeing aircraft or Convair aircraft or any combination?

A. Well, they didn't, as I recall it, particularly point that out, Mr. Davis. The letter so states.

We were, however, I was, deeply conscious of the fact that you were at the time turning heaven and earth to try to prevent the Boeing deal, and very frankly, I just didn't believe what it said.

Q. Did you discuss in what way these proposals to TWA constituted or would constitute an interference with [3823] the Boeing program.

A. Well, it seemed to me perfectly obvious that if you got into a discussion of the termination of the voting trust, that one of the possibilities, very real possibilities, inherent in that was further delay of our Boeing financing, and my feeling was that this was an attempt, if you will, to drag a red herring across the path and get TWA into a position where it was discussing things that would interfere and delay—interfere with and delay consummation of its Boeing financing, and ultimately cause the abortion of the Boeing program.

Mr. Davis: Shall we take a luncheon recess at this point?

The Special Master: We will adjourn until 2 o'clock.

(Whereupon, a luncheon recess was taken.)

*Tillinghast—Deposition*

【3824】 AFTERNOON SESSION

2:00 p.m.

(Thomas D. Barr, appeared for the afternoon session.)

CHARLES C. TILLINGHAST, JR., resumed the stand and testified further as follows:

Mr. Davis: Mr. Special Master, there are two matters I want to take up before resuming with Mr. Tillinghast. The first is that I just received a call from Los Angeles to the effect that equipment which we had to alert us in the event anybody should be trying to use x-ray equipment in taking pictures of these documents did alert us. As previously indicated, some of the documents we are producing are masked.

Apparently this gadget, whatever it is, went on today, and the men there double-checked it and believe at the moment, at any rate, that the equipment being used includes x-ray equipment, which presumably would only be designed to inquire into masked material. There is 【3825】 always a possibility that equipment malfunctioned, of course.

I have directed, therefore, that all photographing be stopped until an expert could be obtained to double-check the matter. I just wanted to report to you that I have given those instructions until I can satisfy myself as to what kind of activities are actually going on.

Mr. Sonnett: May I suggest, Mr. Rankin, that rather than Mr. Davis assuming the functions of the court, to direct that the order not be complied with, that he produce either here before you under oath the people involved or we will go to California, if you are agreeable, and take their testimony under oath on Monday.

*Tillinghast—Deposition*

I think it is highly presumptuous of Mr. Davis to issue any such directions without leave of the Court. I regard his action as contemptuous, without leave of the Court, and I think we are entitled to have the people put on the stand and examined under oath.

The Special Master: Mr. Barr, do you want to contribute any information?

【3826】 Mr. Barr: I saw this machine. I wonder, Mr. Davis said it indicated that something was amiss, do you know how it indicated that?

Mr. Davis: I am not familiar with the equipment. I know that at the time that this photographing equipment was to be brought in a question was raised with me as to the possibility of that equipment taking pictures of material that is under mask, and someone suggested they could obtain equipment which I understand has a needle which is activated whenever x-ray equipment is in use.

It may be the needle may be activated for some other reason.

At the moment I am not suggesting that anything improper is going on. I just wanted to report to the Special Master that on the basis of the evidence that this protective equipment has been activated, whether or not it can be determined as to whether or not there is some x-ray equipment in use on the premises, I have advised the person in charge of production to stop photographing until I could report the matter to the Special Master 【3827】 and take appropriate steps for protecting the Hughes Tool Company.

Mr. Barr: Let me give you a little report on this machine. This has been there. It is like a little box. It appears to be a form of Geiger counter, as far as I could tell. We all picked it up and handled it, and it was a source of much amusement.

*Tillinghast—Deposition*

This machine, since the time we were there, the needle has been bouncing back and forth and the lights have been flashing on and off. If that is the kind of signal it is giving, it has been giving that signal since Saturday, to my knowledge.

I am not an expert on this sort of machine, but I am just telling you that that is what the machine had been doing all the time we were there.

The Special Master: Are you an expert on the question of whether any x-ray machines are being used?

Mr. Barr: Let me say, I am not. Our people are not in there. We left the premises on Wednesday. None of our people are in there [3828] at the present time. I certainly didn't see any x-ray machine or anything I thought was an x-ray machine while I was there.

Mr. Sonnett: I have a statement to make and an application, may it please the Special Master.

First, I apply for a direction that Hughes Tool Company produce here on Monday to the Special Master all masked documents.

Secondly, I apply for a direction by the Special Master that the microfilming of non-masked documents be resumed forthwith.

The Special Master: Mr. Davis, did your order apply to the non-masked documents as well as the others?

Mr. Davis: The instruction I merely gave was to stop photographing—I just got the call; that is one of the reasons why I was almost a minute late—until I could bring the matter up before you, sir.

As I say, there is someone now under way to the premises to determine whether or not this equipment is or is not the kind of equipment which could take pictures of masked material. I would assume, and I can confirm the fact,

*Tillinghast—Deposition*

[3829] that this should be ascertainable in a matter of an hour or two.

I understand, contrary to the statement just made by Mr. Barr, as reported to me by the person who has been there in charge of the production of documents, that this is the first time that they noticed the protective device becoming activated.

At this point I merely wanted to report that we wanted to have an opportunity to double-check the equipment now being used for photographing our documents.

The Special Master: Is there any reason why they can't proceed with those documents which are not masked? Do you want to say anything about that request?

Mr. Davis: I have no objection to proceeding with documents which are not masked, no. I have no objection to that.

The Special Master: Your request that they proceed with the documents that are not masked will be granted.

Mr. Sonnett: As to the other matter, Mr. Rankin, it seems quite evident that we are [3830] running into a problem here which is going to create a good deal of difficulty about masked documents. I needn't, I suppose, say it, but I will, that if anybody has used any kind of contrivance to try and penetrate the masks, it is unauthorized by TWA, and they will be held fully accountable.

I think we are running into another one of the Hughes exercises. I think that the Court has the power and should direct that all masked documents be delivered here Monday morning. I think that the Special Master should examine that which has been masked, and keep the matter under the control of the Court so we won't be playing games of cops and robbers, and get the matter laid to rest.

I don't want to run into a situation like we ran into today

*Tillinghast—Deposition*

where Mr. Davis this morning wasn't aware that he put out a press release and found that he had.

The simple solution is to bring the masked documents in here before the Court. That is where they belong.

The Special Master: Mr. Sonnett, [3831] I accept your statement that any such action, if it is occurring, is without authority. I would assume that, unless it was established otherwise.

With regard to your application to produce the masked documents here, I will reserve ruling on that until 4 o'clock, with the thought that by that time we will have a report as to the accuracy of the machine.

Mr. Barr: May I make a suggestion, sir? I take it we are going to make some inquiries in California. I think it might be very well to find out whether any more machines have been brought in out there. If there haven't been any more brought in, then that machine, this little Geiger counter, has been in the room with all these other machines ever since we began, and if it is accurate and effective, presumably it would have picked up something days ago.

Mr. Davis: I have a call in now.

Mr. Sonnett: There is a simpler solution than that. I will deliver to the custody of the Special Master every microfilm that contains pictures of any document that has been [3832] masked. It is quite simple. The Master can look at them. If there is any hanky-panky, this red herring bit that Mr. Davis is dragging out, then any masking that has been penetrated surreptitiously the Master can deal with, and I can deal with whoever was responsible, if, indeed, it happened, and I doubt that it did.

Mr. Davis: Mr. Special Master, I want to make it clear that we are not claiming that anybody is doing anything improper. It may very well be that someone thinks it is amusing to have introduced in the room something that

*Tillinghast—Deposition*

would make this instrument activate itself to perhaps unduly alarm someone. The only request that I made at this point is for an opportunity to satisfy those who are on the scene charged with the production of documents, let them satisfy themselves that something improper is not going on.

At this point I have no intention of claiming or charging hanky-panky, as Mr. Sonnett would like to call it, by anyone.

The Special Master: I am not going to assume that anyone is using any devices to [3833] penetrate the masking until we have something than can be relied upon as far as a showing is concerned.

I am also not going to examine a lot of masked documents in microfilm form if I can avoid it on the assumption that something has been done improperly when I don't know that it has.

I think that Mr. Sonnett and Mr. Barr, in any way they want to arrange it, might find out from their people anything that they wish to report by 4 o'clock, and I hope that Mr. Davis will have his report by then, and then we will act on your request.

Mr. Barr: Let me make clear, sir, none of the additional defendants have any of the people in the building. They have not been there since Wednesday.

Mr. Davis: May I be excused for a moment to take the call that is coming in now?

The Special Master: Maybe this will answer it.

Mr. Sonnett: I assume that Mr. Cox will here represent him.

[3834] Let me say one other thing. We have hired Recordak, which is a highly reputable organization, to do the job. I have no reason to doubt that they are doing anything except doing the job, and I don't want to get drawn into one of these red herring games.

*Tillinghast—Deposition*

I don't give a continental what any alleged expert that they bring in says or doesn't say. In the first place, whatever he says, if he says anything contrary to what I believe, I will want to cross-examine him. So we are getting no place with that.

The substantive question, I think, is whether information which has been masked should be withheld properly from TWA. That is point 1, and on that we are going to have to have rulings by the Special Master anyway.

Point 2, if any of the microfilms penetrated the mask, and we are not entitled to that information, obviously it should be suppressed and taken away from us.

So that I think the only way to resolve it, without getting drawn into one of these diversionary moves again, is to have the masked [3835] documents brought back here, have a statement given to the Master as to why they were masked, and have rulings made.

We will, as I say, in the same breath, we will lock up the microfilms on masked documents until the Master has ruled. But this is calculated to produce another delay of a week or two weeks before we get at the documents. That is what I think it is calculated to do.

The Special Master: Mr. Sonnett, were you taking into account the possibility that the expert may say that there is nothing that happened so far as penetrating the mask?

Mr. Sonnett: He may or may not, but I don't really care much what he says, because if there was a penetration of the mask it is unintentional, and it is in violation, certainly, of any instructions given by TWA, and if there was an inadvertent violation, the microfilm can be suppressed, if it should be.

But I am saying that the whole exercise here is a diversionary move to delay the question of your ruling on

*Tillinghast—Deposition*

whether we can see what [3836] is masked out or not. I think we ought to have that resolved.

The Special Master: Maybe you have an answer.

Mr. Davis: Yes. The information is coming in.

They are apparently at the moment photographing non-masked documents, and the photographing is continuing. The expert on the machine was just arriving during the course of the conversation, and will examine the equipment to see if it is malfunctioning or what caused it to malfunction if it is malfunctioning.

Mr. Barr: The only point I wanted to make, sir, was if this machine is malfunctioning it has been malfunctioning since Saturday, before there were ever any machines brought in there. This light was flashing and this thing was going back and forth like crazy from the very beginning.

The Special Master: I accept your statement of that fact, Mr. Barr, but I don't have any basis for knowing how it is functioning now.

[3837] Mr. Barr: I understood Mr. Davis to say that that was what it was doing now.

Mr. Davis: I have never seen the machine.

We are taking an awful lot of time, Mr. Special Master, on an issue which, so far as I am concerned, does not require any more of the time of this witness.

The Special Master: I will reserve the question until 4 o'clock. Let's proceed to the witness.

Mr. Sonnett: May I respectfully suggest, not to delay the witness, but I think the simple solution to this is let's not play any games. I think you ought to have the masked documents put before you on Monday. You are going to have to rule on them sooner or later. We will suspend—and it is only TWA who is doing it—we will suspend any

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microfilming of masked documents if there is some kind of a technical problem until you have ruled on the masked documents, and then you are going to tell us whether we can microfilm them or whether we can't.

I don't like to charge this, but I am [3837A] afraid we are running into at least that kind of confusion which has so characterized so much of what we have seen on the part of Hughes Tool Company on documents, and I don't want to run into delays.

Mr. Barr: Mr. Rankin, may I put in a little something?

[3838] The Special Master: One minute.

Mr. Barr: One minute is all I will take.

I think Mr. Sonnett is right, that you are going to have to look at these masked documents.

I can give you some examples. There are examples where letters have been produced. the whole letter is produced, but the addressee is masked out, for example.

These call sheets, there are great portions of those in the middle of conversations which are masked out. I have seen them.

You are obviously going to have to go over them at some point.

The Special Master: In regard to that, I am willing to go over them, but I am not going to be able to with the schedule I have until at least next Friday, which may delay you over what you would otherwise get if you wait.

Mr. Sonnett: It won't, sir. That is my point. His problem is that he doesn't want the Recordak people to microfilm documents with masks on.

Our problem is we want you to examine what is under the mask.

[3839] It seems to me that the simple thing to do, if this is creating some big problem, is to stop the microfilming of

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masked documents, have them sent here, have you rule on them, and then whatever we are entitled to microfilm we will.

The Special Master: Is that any problem to you?

Mr. Davis: No, the production of the documents here is perfectly all right, Mr. Special Master, but I respectfully urge that we receive equal treatment from the Special Master, and that all documents and diaries that were masked by TWA be likewise produced for similar examination.

Mr. Sonnett: No objection to that. You identify them, and we will produce them.

I don't think we produced anything masked from TWA's files. I think you are thinking about Breech's files, and you will have to talk to his lawyer.

Mr. Davis: You seem to distinguish between Mr. Breech as an officer of TWA and TWA.

Mr. Sonnett: There is no objection to that. I wish Mr. Davis would stop stalling. His favorite technique, when he is caught with his [3840] pants down, is to say, "You are another." Let's have the documents in here. You are not going to hide them forever.

The Special Master: If you will produce by next Friday the masked documents of the Hughes Tool Company, I will go into the question of the masking, and I will direct that the same be done as to any TWA documents that were masked, and as soon as we have Mr. Breech before the Court, or I examine the question as to who can act for him, I will do the same as to Mr. Breech's documents.

Mr. Sonnett: I am sure there will be no problem there, Mr. Rankin.

Mr. Davis: Before the luncheon recess a question was asked of me by Mr. Sonnett, which I thought at that time and still think was out of order. The Special Master indicated some interest in the subject, and before resuming the

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questioning of the witness I would be pleased to state the facts for the record and for your information, sir.

The Special Master: Excuse me. Off the record.

■3841] (Discussion off the record.)

Mr. Davis: This is with respect to what transpired in the so-called publicity release and letter to the New York Stock Exchange.

I had an opportunity to confirm the facts during the luncheon period.

They were vague in my mind at the time the inquiry was made by the Special Master, and that was really my underlying basis for objecting to interfering with my discovery proceeding.

The letter to the New York Stock Exchange was prepared by Mr. Cox, who is here with me.

I revised the letter. The letter that actually went to the Exchange was the letter as revised by me.

However, the carbon copies of the letter as drafted by Mr. Cox had not been all destroyed. When the Exchange called and asked that we undertake to release to the press the statement that had been made to the New York Stock Exchange Mr. Settles undertook to do that. He took excerpts from the letter that had been drafted by Mr. Cox rather than the copy of the letter that went to the Exchange.

■3842] That is the explanation of the difference between the statement that went to the press as an excerpt from the letter to the Exchange and the actual letter that did go to the Exchange.

That fact was called to my attention shortly after that occurred. I did not think that the difference was of sufficient materiality to require any further action on the part of the Tool Company.

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The Special Master: Thank you.

Mr. Davis: I do not know of any other release of any kind that was prepared or issued by my office with this limited exception: In connection with applications that were made to the CAB, and relating to Northeast, or the acquisition of control of Northeast, which was withdrawn by either Atlas or Northeast, a statement came out by the CAB relating to that withdrawal which was not satisfactory to the Tool Company.

I communicated with the CAB and advised them that the Tool Company had no objection to making public the memorandum of understanding which had originally been filed with the CAB relating to the acquisition of Northeast, and that the request for confidential treatment which had [3843] been made by Atlas and Northeast was not a request made on behalf of Hughes Tool Company.

Following that discussion with the CAB the Tool Company decided to release to the press the memorandum of understanding which had been filed as a joint memorandum and which had been withdrawn.

I understand that a representative of Carl Byoir & Associates undertook to advise the press of the position taken by Hughes Tool Company and made available to them the memorandum of understanding.

If that was done in the form of a press release, it was done by Carl Byoir & Associates, I never saw it. But I do know that that took place.

So far as the production to TWA of any of such releases is concerned, my statement made several times on the record still holds good, that I believe that we have fully complied with the production called for.

I have not made any special or particular inquiry as to what or which releases, available or in existence, were in

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fact included among the [3844] documents produced either at Houston or Romaine Street.

With the permission of the Special Master, I do believe that my position is proper and sound, that while the Tool Company is engaged in discovery proceedings, oral examination of TWA and of this witness, it should not be interrupted for the purpose of permitting TWA or the additional defendants to engage in what in effect amounts to an indirect oral examination or discovery proceeding.

The Special Master: I wish to allow Mr. Sonnett to comment, if he wants to, upon your statement, and then we will proceed.

Mr. Sonnett: I not only want to, but I feel obliged to, Mr. Rankin.

What counsel had just said, if I understand him, is that the document which he produced, and which has been marked Defendants' Exhibit 61, and which bears at the top the words "By hand," and next to it, in handwriting, "11:50 a.m.," is not in fact a copy of the communication sent to the New York Stock Exchange.

He now describes it, if I understand him, [3845] as a draft—

Mr. Davis: No, sir, you misunderstand me. Let me explain it to you again.

Mr. Cox originally prepared a letter for the New York Stock Exchange in final form with copies annexed.

He came to me with it before sending it. I changed it, and what went to the New York Stock Exchange is the letter as revised by me.

However, there was left in the office copies of the letter as prepared by Mr. Cox and before I revised it.

Mr. Sonnett: Therefore, I am quite correct. We do not have a copy of the letter as sent to the Stock Exchange.

*Tillinghast—Deposition*

Mr. Davis: Yes, sir. That is Defendants' Exhibit 61.

Mr. Sonnett: I am sorry, it isn't, from what you have just said. Where is the change that you made? I don't understand you at all.

Mr. Davis: Can you explain it to him, Mr. Special Master?

Mr. Sonnett: Why don't you? It was your handiwork.

[3846] The Special Master: The way I understand Mr. Davis' statement is that Mr. Cox made a draft—

Mr. Davis: It was a letter in final form, sir.

Mr. Sonnett: Where is it?

Mr. Davis: Destroyed.

Mr. Sonnett: It was destroyed?

Mr. Davis: It was destroyed at the time. It was never sent. I assume you never revise the work of your associates. I do.

Mr. Sonnett: So there is no copy of the document he started out with. That is my point.

Mr. Davis: Yes, there is, in excerpt form, because that is exactly what Mr. Settles sent to the press.

Mr. Settles made excerpts of the carbon copy of the letter as prepared by Mr. Cox. The letter that went to the Exchange was the letter prepared by Mr. Cox as revised by me.

If that isn't clear I will do it once more.

The Special Master: I understand it.

Is there any question about it, Mr. Sonnett?

Mr. Sonnett: Yes. Quite frankly, I may be [3847] stupid today.

The Special Master: Mr. Cox prepared a letter in a final form. Mr. Davis revised it. Exhibit 61 is the revision that was sent.

Mr. Settles took excerpts from Mr. Cox's draft and sent them as the press release. Mr. Davis thought there was

*Tillinghast—Deposition*

not sufficient change between the press release and the document, Exhibit 61, that he need to change the press release.

That is what he says.

Mr. Davis: That's right. The point is that Mr. Cox's letter was not in draft form, and therefore, when Mr. Settles found lying around a copy of a letter addressed to the Exchange that did not have "draft" on it he assumed that it was a carbon copy of the letter which in fact was sent to the Exchange.

Mr. Sonnett: Is Mr. Davis saying that at 6:00 p.m. on May 31, 1961—

Mr. Davis: 6:00 p.m.?

Mr. Sonnett: That is what it says on Exhibit 62A.

(Continuing)—that Mr. Settles dictated to [3848] the Daily Mirror, the Daily News, the Herald Tribune, The New York Journal American, The New York Times, The New York Post, The New York World-Telegram, Associated Press, United Press International and the Wall Street Journal a press release without Mr. Davis' approval.

Mr. Davis: That is correct, in this sense, Mr. Sonnett, that I had approved a letter to the New York Stock Exchange which was delivered to the Exchange at 11:50 a.m.

The Exchange called and asked that we send out to the newspapers the statement of the letter sent to them.

Mr. Settles undertook to do that.

He was instructed to send to the newspapers an excerpt of the letter as sent to the Exchange.

Mr. Settles, unfortunately, got ahold of a carbon copy of a letter in final form as prepared by Mr. Cox which had not been sent to the Exchange, and transmitted that as an excerpt of the letter to the Exchange.

That fact came to my attention several days later, and I didn't think that the difference between what Mr. Settles

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sent to the newspapers and [3849] what I had approved as a letter to the Exchange required any further action by Hughes Tool Company.

Mr. Sonnett: Would Mr. Davis identify who in the Exchange asked them to issue this press release to the press?

The Special Master: I don't think we should go into that at this time, Mr. Sonnett.

When you get to your case I will give you all opportunity to go into those questions.

Mr. Sonnett: I have a variety of questions. In light of your ruling, I will not press them. But they are very interesting, indeed, on this subject matter, such as who made the decision reflected in the exhibit, whether Mr. Davis made it, Mr. Hughes made it, how it was made, and a series of interesting questions such as that.

If I understood correctly, on the question of production of documents, Mr. Davis said a little while ago that he had no idea whether the Carl Byoir press releases had been or had not been produced.

I am interested in the press releases they put out in their press campaign about the so-called [3850] counterclaims. They should be produced, including all drafts.

The Special Master: I understood Mr. Davis to represent that there had been a full production, including any such press releases, as they were called for by various motions and orders.

Mr. Sonnett: I may be in error, Mr. Rankin. I thought he just said that he did not know whether or not the press handouts of Carl Byoir had been produced.

The Special Master: What I understood was that he said he hadn't checked that as a particular item.

Will you enlighten us on that, Mr. Davis?

Mr. Davis: You are correct, Mr. Special Master.

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The Special Master: Now we will proceed with the deposition of Mr. Tillinghast.

*Examination (cont'd) by Mr. Davis:*

Q. Before the luncheon recess, Mr. Tillinghast, I believe you were explaining how this offer by the Tool Company reflected by Defendants' Exhibit 56 had put TWA on the spot.

Do you recall your testimony along those lines?

¶3851 A. Well, I wouldn't consider that an accurate characterization, Mr. Davis, but I recall what I was testifying about.

Q. Then you also testified to the effect that you considered this letter of June 10, 1961 as an interference with the Boeing program?

A. No, I didn't. As an attempted interference.

Q. And you were explaining how this proposal by the Tool Company constituted such an attempt at interference with the Boeing program.

Do you recall your testimony along those lines?

A. Broadly, yes.

Q. And I inquired from you if you understood from this proposal that it was not a condition of the proposal that TWA undertake to acquire either Boeing aircraft or Convair aircraft.

You recall your testimony—

A. I do.

Q. Will you explain further how the proposals, or any one of the proposals set forth in this letter of June 10, 1961, might constitute an attempt at interference with the Boeing program? You need not repeat any testimony that you have already given.

A. Well, Mr. Davis—

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【3852】 Q. You may to the extent you feel it is necessary in order to make a sensible answer.

Mr. Sonnett: You are not asking him for an argument, I take it. You seem to be.

Mr. Davis: Just looking for facts.

Mr. Sonnett: You are asking an argumentative question, in light of the record. This has been testified to at length. Mr. Davis is interested in arguing with the witness. He is not asking for discovery. He wants Mr. Tillinghast to behave as an advocate.

【3853】 The Special Master: You don't have to be an advocate. Just tell the facts, Mr. Tillinghast.

A. Repeating, at least in part, what I have already testified to, Mr. Davis, this impressed me as an attempt to get us involved in a negotiation which would go on for an extended period of time, and which would raise questions which would have the effect of interfering with and postponing the consummation of the financing which was necessary to go ahead with the Boeing program.

Q. Did you understand that the proposals submitted by Defendants' Exhibit 56 could be accepted in a form so as to constitute a commitment on the part of the Tool Company without the delay that might take place with respect to an actual offering of equity securities to the public?

A. It was my understanding, Mr. Davis, that the so-called proposals involved in Defendants' Exhibit—what is the number?

Q. 56.

A. (Continuing) —were not such—

Q. Don't you have Defendants' Exhibit 56 before you?

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A. No, I do not, Mr. Davis. I have a copy of it, [3854] but it doesn't have the exhibit number on it. I will write it on, and then we won't have any problem.

It was not my understanding, Mr. Davis, that the proposals contained in Plaintiff's Exhibit 56 were sufficiently complete with respect to the essential terms that they were subject to a simple acceptance by TWA. It seemed to me obvious that any one of the proposals, had it been "accepted," would have merely been a prelude to extended negotiations to settle the essential terms.

The Special Master: I don't think that is the question, Mr. Tillinghast.

The Witness: I am sorry.

The Special Master: The question was whether or not you thought that it could be accepted without the offering being made to the public. Wasn't that the question?

Mr. Davis: That's right.

The Witness: Well, yes. There was no public offering involved.

Was that your question? I am sorry.

Q. I don't know to what extent you understood either at the time or now the proposal. Let me refer you to page 2

[3855] Mr. Sonnett: May I ask the Master—

The Special Master: You want the question read?

Mr. Sonnett: Yes, and I would like to have that comment stricken. I think that is unnecessary. The question was involved, and frankly I understood it as the witness did. Maybe we both were confused.

The Special Master: Read the question.

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Mr. Davis: It was the answer which brought about the remark.

Mr. Sonnett: The witness has been trying to help you.

(The record was read.)

By Mr. Davis:

Q. Mr. Tillinghast, let me refer you to page 2 of the exhibit, under proposal No. 1, and you see the portion which reads "Hughes Tool Company will agree to subscribe to a pro rata share of any such new offering and will subscribe to any portion unsubscribed by the other stockholders of TWA up to a maximum amount of \$100 million."

A. Yes, I see that, Mr. Davis. I was mistaken.

Q. At the time that you received this letter you [3856] understood it, did you not?

A. I think I understood it, and I will come back to your question before, and I think your question was in two parts, and that is, whether or not this could be accepted, and I say again that in a legal sense I don't think this proposal, or any of them, was capable of acceptance.

The Special Master: I say to you again, Mr. Tillinghast, that wasn't the question. The question was whether it could be accepted without the public offering.

The Witness: My answer, Mr. Special Master, it couldn't be accepted with or without the public offering.

It just wasn't capable of acceptance.

Q. Mr. Tillinghast, my question to you is whether or not you understood that proposal No. 1 could be developed

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into a firm commitment by Hughes Tool Company without involving delays that might be attendant to a public offering.

A. If that is your question, Mr. Davis, the answer is yes.

Q. You understood that?

A. I didn't understand that. I understand your [3857] question now.

Q. My question to you is whether you understood that at the time that you were considering the June 10th letter.

A. At the time I was considering the June 10th letter I was very much impressed by the fact that this was nowhere near being a complete proposal, and that obviously to develop it into a complete proposal capable of acceptance would require a very considerable amount of negotiation and consequent delay.

Q. With respect to this delay that you are referring to, I am trying to establish the fact as to whether or not you understood that it would not be a delay occasioned by the necessity of a public offering.

A. That's correct.

Q. What delay did you contemplate with respect to the terms that would have to be negotiated or the problem of obtaining an adequate commitment of the Tool Company with respect to proposal No. 1?

A. Well, obviously, Mr. Davis, as you well know, the terms connected with any underwriting or guarantee of a public offering are many and varied. But I call your attention to the fact that the most essential ones, as to type of security and price, were not even touched [3858] on in this proposal.

Q. I understand that, but are you aware of the fact that the Tool Company, in connection with the December 1960 financing, committed itself to subscribe to a hundred million dollars worth of income debentures of TWA?

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A. I am.

Q. And that commitment of the Tool Company did not describe in detail the nature or type or terms of the securities that TWA would offer, did it?

A. It did to some degree, as I recall it.

Q. In a general way?

A. In a general way.

Q. And the Tool Company firmly committed itself to not only subscribe to its proportionate share of any equity security which TWA might offer, but also undertook to subscribe to any portion which the other stockholders did not subscribe to—you understood that as the 1960 agreement, didn't you?

A. I don't recall that that involved an equity security, Mr. Davis.

Q. I understand you draw a distinction between equity security and these subordinated income debentures.

A. I do.

【3859】 Q. Do you understand or did you understand proposal No. 1 as one whereby the Tool Company was offering to commit itself to subscribe to an offering of equity securities to be determined by TWA?

A. No, I did not, Mr. Davis. I did not understand this to be a commitment by the Tool Company to buy equity securities of any type or form which TWA might be disposed to offer.

Q. I understand that the letter of June 10th was not in that form. Did you understand that the proposal was to discuss and agree upon a form of commitment by the Tool Company?

A. I understood the proposal to be an invitation, if in good faith, to discuss and agree upon, yes.

Q. Did you understand from the paragraph on page 3 that if you were favorably disposed to an acceptance of this

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proposal the matter could be indicated to Mr. Davis and then whatever details necessary discussed and worked out!

A. I read what it says, Mr. Davis.

Q. At this point I am interested in the understanding that you had at the time.

A. My understanding at the time, Mr. Davis, was that at best this was an invitation to become engaged [3860] in a lengthy negotiation.

Q. Is there any particular part of this Defendants' Exhibit 56 which to you means that it was an invitation to engage in extended negotiations?

A. Well, I think, Mr. Davis, the whole thing smacks of that.

Q. Is there any particular part of it to which you can refer as giving it that flavor?

Mr. Sonnett: I don't know, Mr. Rankin, whether this is producing anything. What it seems to be designed to do is to engage the witness in a debate about the meaning of words. He is not asking the witness whether he understood what was said in the letter, whether he didn't understand it. He keeps going back to the question repeatedly, which the witness has testified to at least a hundred times, about his basic evaluation of the letter.

If we start down a path here about whether this sentence or that sentence or the other sentence conveyed to the witness some meaning other than the words normally conveyed, we are getting into a debate. This is all Mr. Davis is trying to do. He is wasting, I think, a great deal of time.

[3861] The witness has made, I think, very clear his evaluation of the letter, of the proposals in it, the reasons why he had the views he had, and the

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witness is certainly capable of reading and understanding the English language. We are at cross purposes here always.

The Special Master: I don't understand how there is any debate involved, Mr. Sonnett. It seems to me the witness can say "I understood the language" in whatever way he did at the time. The language may say something else to you or to me or Judge Bromley, and the English may be different. But it is what the witness understood and what he did about it that the question asks for.

It doesn't ask here for what he did about it, but it does ask what he understood about it. He drew certain conclusions from it, and he is asked to tell what parts of it he drew those conclusions from.

Mr. Sonnett: He has already testified from the entire letter, sir.

The Special Master: Now he is asked for particular parts.

[3862] Mr. Sonnett: He is being asked whether any particular part.

The Special Master: That's right.

Mr. Sonnett: And if so, what.

The Special Master: Yes.

Mr. Sonnett: The witness has said the entire letter. What are we getting into but a debate about particular sentences?

The Special Master: If he can't find anything except the general letter, he can say so.

Mr. Sonnett: I thought he had. That is the basis of my objection.

The Special Master: If he can't find any particular part that he can point to, he can say so. That is all the question asks for.

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A. I don't think my feeling, Mr. Davis, was based upon particular parts of the letter. I think it was based upon the total letter.

Q. But you understood that the letter was divided into three separate proposals, did you not?

A. I did.

Q. Now we are addressing ourselves to proposal No. 1, and only proposal No. 1.

A. Yes.

■3863] Q. Did you understand that proposal No. 1 was open for only a period of ten days?

A. Subject to an extension.

Q. Subject to an extension of time only if you indicated that you were favorably disposed toward proposal No. 1, isn't that right?

A. That's correct.

Q. Isn't it a fact that under proposal No. 1 you had ten days within which to indicate whether or not TWA was favorably disposed toward proposal No. 1?

A. It so states.

Q. And it was up to TWA to act as quickly or slowly, within the ten-day period, as it wished, isn't that right?

A. It so states.

Q. That is what you understood?

A. To the extent that I accept this as being in good faith, that is what it says.

Q. But I understood you to say a moment ago that while you had these suspicions as a result of conferences with Mr. Rowe and Mr. Reed, you decided to treat the letter as though it were in good faith, isn't that right?

A. In a sense, yes.

■3864] Q. And in a sense no?

A. Well, no. I think—I guess I have to say the answer to that is yes, Mr. Davis. I proposed to deal with it as if

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it were a good faith proposal to see what might conceivably come of it.

Q. Making that assumption, which was an assumption that you were making sometime between June 10th and June 16th—

A. June 12th and June 16th.

Q. June 12th and June 22nd?

A. June 16th.

Q. (Continuing)—you understood that you had ten days in which to indicate whether or not you were favorably disposed?

A. That's correct.

Q. Did you intend your letter of June 16, 1961 to indicate that you were favorably disposed toward proposal No. 1?

A. No, I didn't, Mr. Davis. I intended, in my letter of June 16th, so far as proposal No. 1 is concerned, to indicate certain serious questions associated with proposal No. 1, as to which I thought we needed answers from you.

Q. Is it a fact that TWA concluded that it was [3865] not favorably disposed toward proposal No. 1?

A. No. I think TWA's position on proposal No. 1 was that we were interested in equity financing if it could be arranged, but that the suggestion that had been made here contained an obviously impossible condition, and one probably recognized by you as being impossible.

Q. What condition did you recognize as being impossible?

A. The termination of the voting trust.

Q. What was the basis for your conclusion that this was an impossible condition?

A. That the Hughes Tool Company had turned heaven and earth during 1960 in an attempt to arrange financing

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without a voting trust, and had not succeeded in doing

Q. Did you consider or discuss with anyone the fact that a hundred million dollars of additional equity capital might give the lending institution such additional security that they might no longer be interested in the voting trust?

A. Yes.

Q. With whom did you have such a discussion?

A. With Mr. Leslie, I believe.

Q. Anyone else?

■3866■ A. I probably mentioned it to Mr. Rowe, also to Mr. Reed. But my main discussion of that, so far as I can recall, was with Mr. Leslie.

Q. Will you describe the nature of the discussion which you had with Mr. Leslie on this aspect?

A. Well, I remember asking Mr. Leslie whether he thought the financial institutions would think this sufficient to do away with the voting trust, and he said he didn't think there was any chance of it.

Q. Did he give you any reasons or facts to support this conclusion?

A. Well, I don't remember, Mr. Davis, exactly. It was very hard for me to be sure that I associate things that have been told with specific conversations.

I was aware of the fact, and I think he touched on the fact, that the voting institutions were—I am sorry—the financial institutions were very concerned with the management problem and with the discontinuity of management that had existed, that he didn't feel that with the Boeing financing, which, by this time, had already been informally committed for, coming along, that the financial institutions would be willing to go ahead with the commitment and at the same time accept a termination of the voting trust.

*Tillinghast—Deposition.*

■3867] The Special Master: We will take a short recess.

(Whereupon, a short recess was taken.)

Mr. Davis: During the recess I received a report, but perhaps we can hold that until after Mr. Tillinghast is through. It is very simple. It might give everybody a chance to think about their position at the end by merely stating that the expert has been there, has found the battery has run down.

May we discuss the matter further at the close of the session, if it requires further discussion?

Mr. Sonnett: Mr. Davis, will you bring him in and see whether he can get you to run down? That would be even more helpful.

The Special Master: I am glad that is the end of it. You may proceed.

Mr. Sonnett: I still think, however, that we ought to have the documents produced. They have got to be ruled on sooner or later.

Mr. Special Master: I think that is the understanding.

Mr. Davis: That's correct.

■3868] By Mr. Davis:

Q. In connection with your discussions with Mr. Leslie, that you were testifying about before the recess, Mr. Tillinghast, you referred to the concern of the lending institutions as to the management of TWA. Do you remember discussing that aspect of it with Mr. Leslie?

A. As to the discontinuity of the management of TWA.

Q. At the time you were discussing this matter with Mr. Leslie did you or did he refer to the first sentence of paragraph (b) which appears at page 4, reading:

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"If this proposal is accepted, it would not be the intention of Hughes Tool Company to change the present management of TWA"?

A. No, Mr. Davis, I can't remember whether we mentioned that at that time or not. I think we probably touched on it at least in part.

Q. Did Mr. Leslie have available to him a copy of the letter itself?

A. I believe so. I am under the impression, it is my recollection, that when the letter came in I had photostats made and gave them to Mr. Leslie and Mr. [3869] Cocke. He was familiar with the letter, I am quite sure.

Q. But you don't recall any particular discussion or consideration given to the meaning of what particular sentence?

A. Well, I think maybe, Mr. Davis, as I think about it, that we did discuss that. I have a feeling that these marginal notes, which say "Right to default whole loan,"—

Q. Are you referring to the marginal note which appears next to that paragraph in the letter?

A. Yes, I am. I am sure there is only one that reads substantially that way. What does yours say?

Q. There is the word "of" (handing to witness)!

A. No, there isn't, Mr. Davis. It says "Right to default whole loan."

Q. May I refer you to this (indicating)? Doesn't it look like "o-f"?

A. That, Mr. Davis, is a "T" at the end of "default," d-e-f-a-u-l-t.

The Witness: Would you pick me up, please?

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Q. That is in your handwriting, isn't it?

A. That is in my handwriting. I can appreciate [3870] your difficulty in reading it.

(The answer was read.)

A. (Continuing)—were the consequence of a discussion with Mr. Leslie, and if I am correct in my recollection, Mr. Leslie pointed out that with a maintenance of management position—provision of the type referred to in subparagraph (b) on page 4, TWA would be in the position where if there was some change in management the outstanding indebtedness of TWA could be accelerated, and that leads me to think that the answer to the question you first asked is yes, I did discuss paragraph (b) with Mr. Leslie.

Q. Will you give us your present recollection, then, of the discussion that you had with Mr. Leslie in that regard?

A. Well, my recollection, Mr. Davis, is merely that I discussed with him, as I have several times testified, the question of whether or not the financial institutions would accept a termination of the voting trust, as to which he expressed a negative opinion, and discussed the possible acceptability of a maintenance—management provision, as to which he observed first that he doubted that the financial institutions would accept it, and secondly, that this [3871] might create a serious problem from TWA's standpoint in that it might accelerate all of TWA's indebtedness if there was a management change.

Q. Is that the entire substance of the discussion you had with Mr. Leslie with respect to the likelihood of the lending institutions—

A. Well, as I testified before, I asked Mr. Leslie to get in touch with the financial institutions and obtain from them such expression of views as he could as to whether they

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would or would not give serious consideration to termination of the voting trust on the assumption that there was a equity investment of the sort referred to in the letter.

Q. I appreciate that, but at the moment I am interested in what was said by you and by Mr. Leslie before he went to see the lending institutions.

A. So far as I can recall it at this point, Mr. Davis, I have testified to all that was said.

Q. I understand your testimony as to the opinion, expressed by Mr. Leslie, as you recall it.

I am now trying to develop what you said or he said in support of that conclusion.

Was there any discussion as to why the lending institutions should be opposed or should not be opposed, whether [3872] a particular effort should be made by TWA to try to convince the lending institutions that it was to their interest to acquiesce in the condition?

A. Mr. Davis, I don't remember any discussion beyond that to which I have already testified.

Q. Are you testifying that in fact there was no discussion as to the reasons why the lending institutions would or would not approve other than the statement of his opinion that they would not be likely to acquiesce?

A. No, I am not so testifying.

Q. Was there a discussion as to the reasons that the lending institutions would have for not consenting or acquiescing in the condition?

A. Not that I can recall, Mr. Davis.

Q. Did you indicate to Mr. Leslie that when contacting the lending institutions he ought to make every possible effort to persuade them favorably?

A. No, I did not.

Q. What was the purpose of your discussion with Mr. Leslie?

*Tillinghast—Deposition*

A. The purpose of my discussion with Mr. Leslie, so far as I can recall it, was to obtain his opinion and to ask him to obtain the views of the lending [3873] institutions.

Q. Was it to get the views of the lending institutions on the assumption that TWA was favorably disposed toward the proposal, or from the point of view that TWA was not favorably disposed, or from the point of view that TWA didn't care one way or the other?

A. I would say, Mr. Davis, that I regarded this question of the voting trust as being one primarily between Hughes Tool Company and the financial institutions, which, as I said before, had been the subject of the most long and drawn out and strenuous negotiations just a few months before this.

I personally very much doubted that in the light of that there was any serious likelihood that the financial institutions, so quickly after they had succeeded in establishing the voting trust, would have a sudden change of heart.

Nevertheless, I felt that we should go to them and ask them, and I felt that so far as I was concerned I should ask Mr. Leslie whether he shared my views on the subject, or, more accurately, what his opinion was. His opinion happened to coincide with mine, and that being the case, I asked him to go and find [3874] out from the financial institutions whether that was in fact their state of mind.

Q. My question now is whether or not this conversation you had with Mr. Leslie could be construed as a direction or instruction to Mr. Leslie to approach the lending institutions on the basis that TWA was or was not favorably disposed to proposal No. 1, subject to whatever position they would insist upon.

A. Well, I must come back and say once again, Mr. Davis, that I am sure that our discussion was colored some

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what by the feeling that I had that this was not a serious or genuine proposal.

I did not, as I recall it, give Mr. Leslie any instructions, either to urge the financial institutions to agree to this or urge them not to agree to it.

I had an opinion as to the position they probably would take. I wanted to find out from him whether he shared the opinion, and through him to find out whether or not in fact I was correct in the opinion I thought they would take on the subject.

Q. Did you discuss with Mr. Leslie your views that the receipt of this proposal by TWA was likely to interfere with the Boeing program?

【3875】 A. Mr. Davis, I would have to say that what you say is not a quite accurate summation of my views. I think it highly probable, although I don't recall a specific discussion, that I at least mentioned to Mr. Leslie that I considered that this was another step in the series of attempts to upset and interfere with the Boeing program.

Q. My question is whether or not there was a discussion of that aspect of your views, whatever they were.

A. I tried to say that I have no recollection at the present of a specific discussion.

Q. Do you recall whether or not generally, if not specifically, you at the time told Mr. Leslie "This letter, of course, is nothing but an effort to interfere with the management of TWA or the Boeing program," or something of the like?

A. I think it is very likely that I said that to him, Mr. Davis, but I don't have a specific recollection.

Q. Do you have a recollection of saying that to anyone else other than Mr. Rowe and Mr. Reed?

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A. No, I don't, although I would have said that to anyone with whom I was discussing the letter [3876] to whom such a statement might have been appropriate.

Q. You don't recall saying that to anyone?

A. I don't recall any specific discussions of it other than those to which I have testified.

Q. You are referring to your discussions with Mr. Rowe and Mr. Reed?

A. Yes.

Q. You are not referring to any discussion with Mr. Breech or Mr. Sessel?

A. Well, I don't recall specifically, but I would be very surprised if I hadn't stated that to both of those gentlemen.

Q. But you have no recollection of having done so?

A. I don't have a specific recollection, no, Mr. Davis.

Q. Going back to Exhibit 56, page 3, at the bottom of that page, I see another note with the figure 44,000, it appears to be. Do you see that?

A. I see that.

Q. You think that might have meant 44,000,000 instead of 44,000?

A. At the moment, Mr. Davis, I haven't the slightest idea what it refers to.

[3877] Q. Let me suggest to you that at that time you were contemplating the financing of approximately \$148 million, more or less, and you see that that note is next to the paragraph which reads:

"Hughes Tool Company would guarantee to TWA an additional \$100 million of equity capital."

You think that the 44,000,000 or 44,000, as it appears in the note, might refer to the difference between \$100 million and the amount needed for the Boeing program?

*Tillinghast—Deposition*

A. Well, if it were 42.5 instead of 44 it would have been the difference between \$100 million and \$147.5 million. But it isn't 42.5. Why it is 44, I just don't recall.

Q. It may have been just a rough figure, a notation that you made as you were reading along. Let me ask you this: Did you give consideration as to what the financing requirements of TWA would be if proposal No. 1 were to become a reality?

A. Yes, I did, Mr. Davis. It would have meant that our borrowings would have been a little over \$200 million, about \$210 million, over and above the \$100 million of subordinate debentures, or [3878] \$300-odd million including them.

Q. I don't understand the arithmetic you just did, Mr. Tillinghast.

When you say "borrowing," let us eliminate from the borrowing concept the income debentures that were issued to the public and to Hughes Tool Company, and let's think of those in terms of securities.

A. Well, Mr. Davis, it is as simple as this. I add to \$165 million of the 1960 financing \$42.5 million over and above the \$100 million for the 1961 Boeing program, and I come, I guess, to \$207,500,000, and one of the things that I was thinking about, and this may be the reason for this note here, is that even with the \$100 million we would still be in a position where we would need extensive outside debt financing, even before we got to the stage 3 or short-range program.

Q. I understand there was always a problem of further and future additional requirements.

A. That's right.

Q. For the moment I am addressing myself to what was then immediate and contemplated by TWA.

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A. So far as what was immediate and contemplated [3879] by TWA, I would have to say that whenever one talked about equity financing that brought to my mind the question of the third phase short-range program, and in connection with a \$100 million of additional equity, I looked at that in terms not only of the 1960 program and the 1961 Boeing program, but also the short-range program that would have to come on beyond that, for which we would unquestionably need financing.

Q. In connection with your discussion with Mr. Leslie, did you attempt to compute the difference between the interest requirements of the program as then contemplated as against the payments which might have to be made, if earned, on equity securities or additional subordinated income debentures, or the like type of security?

A. We may well have, Mr. Davis. I don't recall it specifically at the moment, but it is very likely.

Q. Can you give me your best recollection as to what study or the conclusion of any such study—

A. Well, I am quite sure there was no study. The task of figuring the difference between interest on \$100 million and the cost of \$100 million of equity is a very simple problem that one can do very readily in his head—

[3880] Q. Would you mind doing it for me now?

Mr. Sonnett: The witness hadn't quite finished his answer.

Mr. Davis: I am sorry.

The Witness: Would you read back what I started to say?

(The answer was read.)

*Tillinghast—Deposition*

A. (Continuing)—and I don't recall that there was any specific study made or that there was anything beyond the stage of casual conversation.

Q. Would you give me now this computation that you say—

A. Obviously, Mr. Davis, if you have \$100 million of debt at 6 per cent a year, that is \$6 million a year, and if you assume that you save half of it by taxes, that is \$3 million. So that the cost after taxes of \$100 million of debt is \$3 million, and if you don't have debt, but you have equity instead, the earnings of the company are \$3 million higher than they otherwise would have been.

Q. You are assuming, of course, that with a debt you will be able to earn so as to have taxable income rather than a loss?

A. I said it is \$6 million before taxes and \$3 [381] million after taxes. You make whatever assumption you want as to whether you have made profits and have paid taxes or not.

Q. What assumption did you make?

A. Mr. Davis, I don't think I made any assumption.

Q. At that time were you expecting 1961 to be a profitable income taxable year for TWA?

A. If I recall the time correctly, that was becoming an increasingly dubious prospect.

Q. At that time, when you were considering this June 10th proposal, you did think it was rather dubious as to whether or not TWA, in 1961, would have any earnings.

Q. Well, it was about this time that there seemed to be a pretty serious question about it, Mr. Davis. I can't recall exactly what the picture was on June 12th, but the signs were certainly beginning to appear by then.

*Tillinghast—Deposition*

【3882】 Q. Do you recall whether that aspect of it was included in your discussion with Mr. Leslie, or possibly Mr. Breech, or Mr. Sessel?

A. No, I don't, Mr. Davis, and I have to come back and say again that my views as to the nature of this proposal limited the time and effort that I thought it prudent to spend on running down such things, and I also point out that you don't look at these things from the standpoint of one year alone, you look at them from the standpoint of an extended period of time.

Q. At this point, Mr. Tillinghast, I am trying to obtain as completely as possible from you the extent to which serious consideration was given to this proposal, on the assumption that it might have been proffered in good faith, contrary to your suspicions, perhaps, and it is in that connection that I am asking you what consideration was given or suggestions that you may have had.

A. Mr. Davis, there was no, I think, particular question in anyone's mind, certainly in my mind, that it would be desirable to add to TWA's equity base if possible. The problem wasn't the desirability or lack of desirability of adding to TWA's equity base. The problem was the realism or lack thereof of the proposal.

【3883】 Q. Because of the condition relating to the voting trust?

A. And because of the question of whether it was in good faith or just another maneuver in a series in which you seemed to be engaged at the time.

Q. But if we assume that it was in good faith, then the only problem was whether or not the lending institutions could be persuaded to acquiesce in the voting trust condition?

A. Not the only problem, Mr. Davis, but the big threshold problem was the problem of whether there was any

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reasonable—any realistic possibility whatever of securing a termination of the voting trust.

Q. You referred to the third stage financing requirements that you had in mind at that time. Did you consider obtaining a commitment for a hundred million dollars of equity capital was something which would further the interests of TWA or adversely affect those interests?

A. Mr. Davis, I have said I don't know how many times now that I thought in and of itself the addition of equity to TWA was a desirable thing, and I so stated in the letter which I wrote to Mr. Holliday.

Q. Was that aspect discussed out loud with these [3884] persons that you have identified as having discussed the matter?

A. I have no specific recollection of it at the moment, Mr. Davis. It very likely was.

Q. If you assume that the proposal was made in good faith, the terms of the proposal would not interfere with the business or objectives of TWA?

A. Well, that is hard to separate, Mr. Davis, from the condition that was placed on it.

I think you—if out of the question one of the most important parts of the proposal—it seemed to me that it was not a genuine, serious proposal, but rather it was a maneuver.

I said before, and I will say for about the tenth time, that additional equity in and of itself I considered good, and if it were just as simple as getting a hundred million dollars of additional equity capital, that was fine and good, and I was all for it.

Q. Is it fair to say, then, that the only part of this letter which disturbed you was your belief that it was not made in good faith?

*Tillinghast—Deposition*

A. Well, now, are you talking about the whole letter, or proposal No. 1, which we have been talking about?

【3885】 Q. I am talking about proposal No. 1, and I am conscious of your prior testimony that you considered the receipt of this letter as a maneuver and effort to interfere with the affairs of TWA.

You recall your testimony, that you identified this letter as one of those letters?

A. Oh, yes, I do. You don't need to state that still another time, Mr. Davis.

Q. Now I am asking you if it is a fact that the only aspect of this proposal No. 1 which made you feel that it was an interference, an improper interference, with the affairs of TWA was because of your feelings, assumptions or conclusions that it was not made in good faith.

A. Well, Mr. Davis, I don't think that is quite so. I think I just have to refer you to my very lengthy prior testimony on the subject, and to point out that this contained what seemed to me the impossible condition about termination of the voting trust, it raised a question of CAB approval, it raised the question, about which I have testified, as to whether or not the company might get in a position where a management problem would accelerate its entire indebtedness.

But I think all these things are secondary to 【3886】 the main concern, which was that it was not a good faith proposal.

Q. I understand that, Mr. Tillinghast, but what I am trying to determine is what aspects of this proposal No. 1 were, in your view, an improper interference with the affairs of TWA, if you assume that it was made in good faith.

*Tillinghast—Deposition*

Mr. Sonnett: And excluding prior testimony, I take it.

Mr. Davis: Without repeating prior testimony.

A. I just have to repeat my prior testimony, Mr. Davis.

Q. You referred to CAB approval, and I note that on page 4, at the top of the page, this note appears: "CAB approval." That is also in your handwriting?

A. That's correct.

Q. What does that refer to?

A. That refers to the fact that any such arrangement of this sort would obviously require CAB approval.

Q. You note that this appears with respect to the part of the proposal which reads:

"Hughes Tool Company would guarantee to TWA an additional \$100 million of equity capital which [3887] would not only further secure the lending institutions, but would enable TWA to undertake an aggressive program for acquiring additional jet aircraft which, according to our understanding of your position, are unquestionably desired by TWA."

Mr. Sonnett: That is not the complete paragraph.

Mr. Davis: That is the end of the sentence, the "CAB approval" note appears at the top of the page there, doesn't it?

Mr. Sonnett: That is what you left out of your question.

Q. The balance of it reads:

"Furthermore, with such additional equity capital TWA should be able to obtain without difficulty adequate financing from the present lending institution or others for expanding its present jet aircraft fleet

*Tillinghast—Deposition*

with either Boeing aircraft or Convair aircraft or both as may be determined by the management of TWA."

With respect to that paragraph, you have a note, "CAB approval."

Mr. Sonnett: I think you ought to ask the [3888] witness whether the note relates to that paragraph or something else. That is my problem. I don't know what it relates to. The note is at the top of the page.

Mr. Davis: May I proceed?

Q. Does that note refer to the CAB approval which would be required with respect to a transaction between Hughes Tool Company and TWA?

A. It does.

Q. In other words, you were aware of the fact that any commitment by Hughes Tool Company to subscribe or enter into any transactions with TWA involving more than \$200 was subject to CAB approval—that is what you were aware of, weren't you?

A. I believe I was aware of that at this time, Mr. Davis, but I don't think that that was specifically what I had in mind.

I had in mind the observation of the Civil Aeronautics Board in its opinion approving the voting trust that in the event of the termination of the voting trust there would have to be the most careful—I can't remember just what their words were—

Q. Searching inquiry.

A. (Continuing)—most searching inquiry as to [3889] whether or not this would serve the public interest.

*Tillinghast—Deposition*

Q. That was a statement that appeared in the ex parte order of the CAB that was issued in connection with the 1960 financing?

A. Well, it was in the order that approved the setting up of the voting trust.

Q. When you say "the order which approved the setting up of the voting trust," you are referring to the order which has been previously identified and which approved of the transaction between the Tool Company and TWA, are you not, relating to the 1960 financing?

A. Let me say, Mr. Davis, it is the one that has been, believe, already marked in evidence, to which I have referred before.

Q. Did you discuss with anyone what the attitude of the CAB was likely to be in approving or disapproving the further transaction between the Tool Company and TWA if it were to become a reality?

A. As far as I can recall, Mr. Davis, the only thing that I did was, I believe in talking with Mr. Rowe, observe that obviously there was a question of what the CAB would do with this if it got that far.

Q. What was the nature of that discussion?

[3890] A. Well, it was about, as I recall it, about pre-emptory as that, merely to note there was a very obvious question.

Q. A very obvious question?

A. Right.

Q. But did anybody say anything to you indicating likelihood or unlikelihood of problems that might be encountered with CAB?

A. Not that I recall, Mr. Davis.

Q. Did TWA make any effort to contact or communicate with CAB as to their views or attitude, or what it might be in connection with such a transaction?

*Tillinghast—Deposition*

- A. Not so far as I can recall.
- Q. Do you recall discussing that matter with Mr. Breech?
- A. No, I don't.
- Q. Do you recall that Mr. Breech at one time had indicated he had discussed with CAB the subject of his becoming a voting trustee?

Mr. Sonnett: I object to the question as repetitious, and as calculated to produce the further wastage of another hour or more in going over what has been gone into in great detail.

The Special Master: What purpose—

【3891】 Mr. Davis: My question was intended solely to elicit whether or not he recalled his testimony in that regard.

Mr. Sonnett: I have no objection to that question.

- Q. Do you recall your testimony in that regard?

The Witness: Would you read back exactly what he said my testimony was?

Mr. Sonnett: He is withdrawing his characterization of the testimony, as I understand it. He is just asking whether you recall the testimony.

The Witness: I am sorry. I lost the thought.

Mr. Sonnett: May we have a fresh question?

- Q. Do you recall your testimony with respect to statements made by Mr. Breech as to his conversations with the staff of CAB at the time he became or contemplated becoming a director or voting trustee?

A. Well, Mr. Davis, I think I do recall my testimony, and I think I also recall that I said that I think I must have been mistaken in that particular testimony.

*Tillinghast—Deposition*

Q. The purpose of this line at this time is to try to refresh your recollection as to whether or not [3892] in any conversation you had with Mr. Breech Mr. Breech indicated that he might be helpful before CAB, or that he had some particular information as to the attitude of CAB.

A. No, Mr. Davis, I don't recall having discussed this aspect of this letter with Mr. Breech at all.

Q. I note that next to the portion of the paragraph that appears at the top of page 4, which reads, in part, "TWA should be able to obtain without difficulty adequate financing . . . , et cetera, you have a double line to emphasize it.

Is there any particular significance to that? Does that indicate that you discussed this matter with anyone in particular?

A. No, I think that just indicates, Mr. Davis, that that raised a question which was really at the meat of the coconut, would such an arrangement as we were talking about here in fact put us in a position to obtain without difficulty adequate financing for expanding our jet fleet.

Q. That doesn't indicate that this portion of the proposal was one which you felt required particular exploration or discussion with anyone?

A. Well, let me state it this way, Mr. Davis, [3893] that I think I was emphasizing that because, assuming that this proposal was in good faith, this got really to the meat of the question, and that is, would this enable us to obtain adequate financing for fleet requirements.

Q. My question is whether or not that indicates, since it was the meat of the question, whether you discussed it with anyone.

A. I am sure I did.

Q. You are sure you did?

A. I am sure I did.

*Tillinghast—Deposition*

Q. Can you identify with whom you discussed this aspect?

A. Oh, I am sure that I discussed that with Mr. Leslie, very likely with Mr. Rowe, and possibly others, possibly Mr. Sessel.

Q. Do you recall the substance of the discussion that you had with Mr. Leslie and Mr. Sessel and Mr. Rowe relating to this aspect of the proposal which you accentuated?

A. Well, Mr. Davis, without now distinguishing between the particular individuals, I am sure that I stated to one or more of them that the real question, as I saw it, taking this proposal at face value, was [3894] whether or not it would make it easier or more difficult to obtain the financing necessary for jet fleet purposes for TWA.

Q. Now I am interested in what you said, what they said, or your recollection, would it make it easier or more difficult.

A. My recollection of the discussion was that this just got us back to the question of whether or not the financing institutions would (a) accept termination of the voting trust and (b), if they did, would they continue to lend money in the quantities that might be required for these purposes.

Q. This was really the meat of the question, wasn't it?

A. That's right.

Q. Did you personally discuss this with any representative of the leading institutions, proposal No. 1?

A. I may have, and I think it is probable that I discussed it with Mr. Sessel.

Q. Are you referring to that telephone conversation you mentioned previously?

A. No, I am not, because that came at the end of the discussion, in a sense, after he had talked with the financing

*Tillinghast—Deposition*

institutions. I have a recollection [3895] that some time before then I had talked with him and discussed the question of whether or not this would or wouldn't enhance TWA's ability to finance.

Q. Now I would like you to give us your total recollection with respect to that discussion or meeting.

A. Well, I can't identify it, Mr. Davis, as either a telephone discussion or a face-to-face meeting. I can't recall much more of what I said than I have already testified to.

As to what Mr. Sessel said, the only thing that sticks in my mind was that he doubted—he didn't believe that the financial institutions would have any interest whatever in financing TWA without the voting trust.

Q. Do you recall whether that was a discussion you had in private with Mr. Sessel, or was it a conversation which involved others?

A. My best recollection, but I wouldn't be positive of this, Mr. Davis, is that it was a telephone call.

Q. Was it a lengthy discussion, was it a very brief one, casual, serious?

A. My recollection, as best I can recall it, is [3896] that after this was received by Irving Trust Company Mr. Sessel called me up and asked me had I seen this, and I think, so far as I can remember, that it was in the course of that telephone conversation.

Q. Tell me what happened when Mr. Sessel called you up and asked you if you had seen this.

Mr. Sonnett: You mean anything that he hasn't already testified to, Mr. Davis?

[3897] Mr. Davis: I don't believe that we have covered this before.

Mr. Sonnett: The witness has testified as to his recollection of the conversation, and said he didn't

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remember whether it was in person or by telephone. We are talking, apparently, about some conversation prior to the board meeting, at which this was discussed in great detail, at which Sessel and others were present.

But the witness has described his recollection, and he has now said his best recollection is it was probably a telephone call. He has already described what was said. I hope he is not being asked to repeat that again.

A. I really don't remember, Mr. Davis, anything beyond that.

Q. Beyond what?

A. Beyond what I just testified to.

Q. I didn't understand that you have testified yet as to what Mr. Sessel said to you or you said to him when he called you. I understand you to have testified that you believe you had a discussion with Mr. Sessel, the occasion being when Mr. Sessel called you to say "Have you seen this letter which I have received?"

[3896] Now I am asking you to tell me what took place in that conversation, by telephone or otherwise, when Mr. Sessel for the first time asked you if you had seen this letter of June 10th, a copy of which he had received, since one was addressed to the Irving Trust Company.

A. Mr. Davis, so far as I can recall it, and I don't want to just guess at what I suppose was said here, as far as I can recall it, Mr. Sessel called me up and asked me if I had received this letter. I undoubtedly told him that we had. We discussed it, as I recall it, very briefly, and I don't recall any specifics of the discussion beyond what I have already testified to.

*Tillinghast—Deposition*

Q. That is the sum total of the contact that you personally made with the lending institutions to discuss the meat of the problem?

Mr. Sonnett: Oh, Mr. Rankin, what contact did he make. He got a telephone call. Mr. Davis is just provoking argument.

The Special Master: The inquiry that Mr. Davis started out with was what contact Mr. Tillinghast made himself with the lending institutions.

[3899] Mr. Sonnett: The answer was he didn't recall any.

The Special Master: Oh, no. He said he thought that he had made contact with Mr. Sessel, and he was the only one, and that was through a telephone conversation.

Mr. Sonnett: Not that he made contact.

The Special Master: That he had a conversation.

Mr. Sonnett: That is why I am objecting to the form of the question. It just produces argument.

The Special Master: If that is not clear, the witness should say whether or not he ever made any effort to contact the lending institutions himself.

A. As I recall it, Mr. Davis, I had no discussion of this with the lending institutions other than conversations that I had with Mr. Sessel.

Q. But the question to you, Mr. Tillinghast, is whether or not you, as chief executive officer of TWA, made personally a contact or attempted to contact or communicate with any representative of the lending institutions with respect to proposal No. 1.

[3900] Mr. Sonnett: Directly or through someone else, Mr. Davis? We are going to go right back into that same exercise.

*Tillinghast—Deposition*

The Special Master: Leave it directly first, and let's get that answered.

A. Not that I recall.

Q. This is a matter you left entirely to Mr. Leslie?

A. As I recall it, I asked Mr. Leslie to get in touch with the financial institutions, and I did not do so myself.

Q. And you did not ask anyone else on behalf of TWA to approach the lending institutions with respect to this matter other than Mr. Leslie?

A. No, I am quite sure I didn't, because Mr. Leslie would have been the natural one to talk with them.

Q. But whether or not he would have been the natural one, the thing I would like to establish at this point is whether you asked anyone other than Mr. Leslie to communicate with the lending institutions with respect to this proposal No. 1, any problems that it might create, or anything else relating to that proposal.

A. I said no.

Q. Did you communicate with the financial advisers [3901] of TWA? I am referring to Dillon, Read primarily.

A. I don't recall having done that, Mr. Davis, and I doubt it. It is possible I did, but I have no recollection of it.

Q. You think it is possible that you may have?

A. It is possible, but I don't think so.

Q. Was there any particular reason for not discussing this matter with the financial advisers, Dillon, Read in particular?

A. Mr. Davis, there was one very compelling reason, and that was that—particularly at this time, and I guess it has been true ever since I have been at TWA—the greatest single problem that I have had is how I would apportion

*Tillinghast—Deposition*

my time, and while I appreciate that this particular matter was something to which you were privileged to spend practically—to devote practically all of your time, I had a thousand and one things that were pressing to be done, and I had constantly to make judgments as to what it was fruitful and profitable to spend my time on and what it wasn't, and as I recall the circumstances at the time, I did not consider that an exploration in depth of this subject with all of the people with whom it might have been explored was something to which I should devote my time and attention.

[3902] Q. You had been discussing with Dillon, Read the 1961 financing, had you not, during that period?

A. Well, it depends on what you mean by this period.

Q. I am referring to the period during which you were considering, on the assumption that it might have been in good faith, this letter of June 10th.

Mr. Sonnett: I object to the form of the question. It is an incorrect summary of the testimony. Mr. Davis ought to stop testifying.

We get into more wasting of time and money because he insists on trying to improve the record. If he would just refer to the subject matter the witness testified about, and let the record stand, we would do a lot better.

The Special Master: Could you rephrase the question?

Mr. Davis: What is the question as it now stands on the record?

(The question was read.)

Q. I am referring to the period between June 12th and June 22nd.

*Tillinghast—Deposition*

A. Well, Mr. Davis, let me point out I replied to this letter on June 16th. But anyway, taking the longer [3903] period from June 12th to June 22nd, I have no present recollection of having been in particular contact with Dillon, Read during that period.

Q. June 22nd was the date on which the ten days expired by reason of a subsequent letter you received stating that since the June 10th letter was not received by you until June 12th the offer would remain open until June 22nd, that is the reason for the period June 12th to June 22nd, and the question is whether or not it is not true that during that period of time you were actively concerning yourself with the general problem of the 1961 financing and the Boeing program.

A. That is not my recollection, Mr. Davis. My recollection is that—so far as my personally being concerned is involved—that I was quite concerned in the last week of May, and that after that crisis was over Mr. Leslie carried it along pretty much through the month of June.

Q. Wasn't it at or about that period that you had discussed with Mr. Leslie a fee of \$200,000 for Dillon, Read?

A. It may have been, but I don't consider that being involved with Dillon, Read on the financing.

[3904] Q. Wasn't it during that period that you also had considered the \$750,000 fee which had been paid to Dillon, Read in connection with the 1960 financing?

A. It possibly was. I just don't recall those dates, Mr. Davis. They are easily established.

Q. But you are quite certain that you did not discuss with a representative of Dillon, Read this proposal No. 1, or any of the problems which it created?

A. No, I am not quite certain, Mr. Davis. That is not my testimony. I said I had no recollection of it...

*Tillinghast—Deposition*

If in fact I had, during this period, some contact with someone from Dillon, Read, it would have been very natural to have discussed this, and I very likely did.

I am merely saying that I have no present recollection of having discussed this with someone from Dillon, Read.

Q. If there was any discussion, then, it was a rather casual discussion?

A. All I can say is I have no recollection of any discussion with someone from Dillon, Read.

Q. Do you know if anyone representing or purporting to represent TWA discussed this matter with Dillon, Read?

Mr. Sonnett: Mr. Davis, or Mr. Rankin—perhaps we will get at it faster—Mr. Davis' questions are often very blind as to time. I don't know whether the minutes of the board of directors meeting of TWA of June 21st, in which there is extensive discussion of this subject matter and resolutions of the board, have been marked or not, but if he has a blind question, as he has as to time, we are only getting a lot of confusion here.

The Special Master: Do you want to show the minutes to the witness so as to refresh his recollection?

Mr. Sonnett: If Mr. Davis is saying prior to the board meeting of the 21st, and if he proposes to show the minutes to the witness, all right. But this way I don't know what the record means, whether he is talking at any time, before, during or after the board meeting, when this matter was disposed of.

Mr. Davis: I have no objection to counsel for TWA refreshing the witness' recollection.

*Tillinghast—Deposition*

■3906] Mr. Sonnett: If the minutes haven't been marked, I suggest they be shown to the witness and marked, and let's get on with it. This way the record is meaningless.

The Special Master: If it will help to refresh his recollection, Mr. Davis has already said you could tell him—

Mr. Sonnett: I invite the attention of Mr. Davis and the witness and the Master to the minutes of June 21st, page 2, at which, under the heading, "Relations with Hughes Tool Company," there commences about four pages of discussion of this subject matter, discussion of Mr. Holliday's letter, discussion of Mr. Tillinghast's reply, the resolutions of the board. It is all set forth in detail. This is a very wasteful way of going about it.

The Special Master: I suggest that the witness look at that over the recess, and before the next session, and see if he refreshes his recollection in the meantime, and give us his recollection the next time we meet.

Mr. Sonnett: The difficulty is the question was blind as to time, and I didn't know whether he ■3907] was seeking to elicit something that happened at the board meeting on the 21st of June, or sometime thereafter, or sometime before. That is the problem.

Mr. Davis: Mr. Special Master, I think the record is clear that I was not inquiring as to what happened at the board meeting on June 21st.

I was inquiring the extent to which, during the period of time when presumably consideration was being given to this proposal, this witness, or any other representative of TWA, discussed the matter with Dillon, Read.

*Tillinghast—Deposition*

Mr. Sonnett: We have just gone through a series of questions the terminal date of which was June 22nd, the day after the TWA board, as he knows, because he has the minutes, reviewed it in extenso, and took resolutions on the subject matter. That is the problem. It is perfectly blind as to time. We don't know what he is talking about, and it wastes an awful lot of time.

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[5514] Q. Mr. Tillinghast, I would like to turn to a different subject.

Have you had an opportunity to fully refresh your recollection with respect to the minutes of the meeting of the board of directors which took place on June 21, 1962?

A. I refreshed my recollection as to a particular portion of them.

Q. In that connection did you also have occasion to view [5515] the notes of Mr. Duckworth?

A. No, I did not.

Q. To orient your thinking, I am going back to the events which occurred between the time that TWA received the letter of June 10th from the Tool Company, and the board meeting which took place on June 21st.

I would like you to refer now to what has been marked as Defendants' Exhibit 11-P.

You will note that Defendants' Exhibit 11-P—can you identify what Exhibit 11-P is? If you will recall your testimony is that is one of the documents you identified when you identified a number of documents which you felt constituted part of the Tool Company's interference with the affairs of TWA.

A. What is your question?

Q. Can you identify Defendants' Exhibit 11-P?

*Tillinghast—Deposition*

A. I believe that is a telegram that you sent to each of the directors of TWA on June 20, 1961.

Q. Defendants' Exhibit 11-P is a document which is entitled in parentheses, "(Telegram received by Irving Trust Company, New York City, 8:11 p.m., June 20, 1961—Telephone to Mr. Sessel at home)."

Then it appears to be addressed to Mr. Ben-Fleming Sessel and signed Raymond M. Holliday, Hughes [3516] Tool Company.

Do you see that?

A. Yes.

Q. First I would like to understand how this happened to be in the files of TWA?

A. That I don't know, Mr. Davis. Indeed I don't really know where this came from.

Q. Do you see that little number on the lower left-hand side—"98"?

A. If you say this came from our files, I will take your word for it.

Q. It was handed to us by your counsel as coming from your files, and it is one of the documents that you identified from the originals.

Do you remember when the files, certain files, of TWA were put before you and you identified those documents which you felt constituted part of this interference by the Tool Company?

A. Yes, I do.

Q. And each one of those exhibits were identified as Defendants' Exhibit 11 with an identifying letter after it?

A. I don't recall the particular letter, but if you say so, I will accept it.

[3517] Q. You have no information at all as to how this document happened to be in TWA's file?

*Tillinghast—Deposition*

A. No, I don't, Mr. Davis.

Q. Can you identify or explain in what respects this telegram is interference by the Tool Company?

Mr. Williams: I think that is a conclusion—a legal conclusion that he is asking the witness for, and I object to it.

He has produced the letter. The telegram speaks for itself.

Mr. Davis: Apparently Mr. Williams is not aware of the testimony given by this witness, which identifies this telegram as one, or part of the course of conduct by the Tool Company which he has described as malicious and willful interference in the affairs of TWA.

Mr. Williams: Does he have to argue with you as to why he thinks so?

Mr. Davis: No, I am asking him to point out what portion, if any, of this telegram he regards or considers to be an improper interference with the affairs of TWA.

Mr. Williams: He has said the whole telegram.

Mr. Davis: He has identified the document.

[5518] Maybe he would like to adopt your answer. I will take it if that is his answer.

Mr. Williams: Do you want to argue a legal point with the witness?

Mr. Davis: No.

Mr. Williams: Then I will object to the question.

The Special Master: I think the objection is good. If you want to ask him whether there is some portion that he considers an interference—

Mr. Davis: Perhaps my question was poorly worded. That is what I had in mind.

*Tillinghast—Deposition*

By Mr. Davis:

Q. What portion, if any, any particular portion of this telegram, do you consider to have had the effect of interfering with the affairs or the management of TWA?

Mr. Williams: You mean if not the whole, then what portion?

Mr. Davis: No.

Mr. Williams: I don't understand.

Mr. Davis: I am sure the witness understands, because he claims this telegram has constituted some kind of interference, and I am trying to find out how this telegram either had the effect of interfering, or [5519] what effect it had on anybody, how it interfered with the business.

Mr. Williams: That is a legal argument—what effect it had on anybody. It is a conclusion.

The Special Master: He can ask what they did as a result of the telegram.

Mr. Williams: I don't mind that.

By Mr. Davis:

Q. This is a telegram that was addressed to all the directors of TWA so far as you know, is that right, Mr. Tillinghast?

A. That's correct.

Q. This particular document was one which was addressed to Mr. Ben-Fleming Sessel?

Mr. Williams: It says so. Yes, it says so. He doesn't have to answer that.

Go ahead.

*Tillinghast—Deposition*

Mr. Davis: I do not know that he even knows it is a telegram that Ben-Fleming Sessel received.

Mr. Williams: He found it in the files.

By Mr. Davis:

Q. Did someone telephone to you and inform you that Mr. Sessel had received this telegram?

A. Not that I can recall, Mr. Davis.

【5520】 Q. Did you receive such a telegram?

A. I believe I did.

Q. How did you find out that all the directors had received similar telegrams?

A. I believe that enough of them told me that they had received such a telegram, that I got the impression that everyone had received one.

Q. Can you identify any portion of this telegram which had the effect of interfering with whatever TWA management was trying to do?

Mr. Williams: I object to the question on the grounds I already stated.

It is impossible to answer that question.

The Special Master: Sustained.

We will have a short recess.

(A short recess was taken.)

【5521】 By Mr. Davis:

Q. Mr. Tillinghast, can you explain why TWA's files do not contain the telegram which you received?

A. No, I haven't the slightest idea, Mr. Davis.

*Tillinghast—Deposition*

Mr. Davis: May I request at this time that TWA through its counsel if need be advise us whether or not the telegram received by Mr. Tillinghast and others of TWA, exist in the files of TWA.

The Special Master: Can you include in that request the number it was identified by? Isn't that 11-P?

Mr. Davis: The telegram, or the original of the telegram of Defendants' Exhibit 11-P.

The Special Master: You may request it.

Mr. Williams: I will inquire into it.

By Mr. Davis

Q. Do you recall, Mr. Tillinghast, any conversation with Mr. Sessel with respect to Defendants' Exhibit 11-P?

A. Not specifically, no, Mr. Davis.

Q. Do you recall something generally?

A. I think unquestionably I had some words with Mr. Sessel and most of the other directors about the fact of the telegram having been sent, but I can't recall a specific conversation with Mr. Sessel.

[[5522]] Q. Do you recall a conversation on this subject with Mr. Breech?

A. No, I don't recall a conversation with any specific person, Mr. Davis, although I am sure that this was the subject of at least a casual comment at the directors meeting.

Q. With the answer you include Mr. Rowe or Mr. Reed?

A. I don't know about Mr. Reed. It would include Mr. Rowe, I think.

Q. Does that mean that you recall a discussion with Mr. Reed?

*Tillinghast—Deposition*

A. I do not recall any discussion with Mr. Reed. Mr. Rowe was at the directors meeting, I believe, and undoubtedly participated in such discussion if it took place there.

Mr. Davis: May I have marked for identification the minutes of the board meeting of June 21, 1961, as Defendants' Exhibit 76.

(Minutes of the board meeting of June 21, 1961, marked Defendants' Exhibit 76 for identification, as of this date.)

Mr. Davis: May I have marked as Defendants' Exhibit 77 for identification the Duckworth notes relating to that same board meeting?

(Duckworth notes relating to board meeting marked Defendants' Exhibit 77 for identification, as of this date.)

【5523】 By Mr. Davis:

Q. Mr. Tillinghast, let me hand you what has been marked as Defendants' Exhibits 76 and 77. First I will ask you do the minutes of the board meeting of June 21st fairly and accurately reflect what took place at that meeting?

A. I believe they do.

Q. Who prepared those minutes?

A. I believe Mr. Duckworth did.

Q. Do you recall whether or not you had occasion to review and revise those particular minutes?

A. No, I don't recall that, Mr. Davis.

Q. Do you recall whether or not they were reviewed or revised by counsel for TWA?

*Tillinghast—Deposition*

A. I am sure they were submitted to counsel for TWA. They are in the regular course. What revisions counsel may have suggested in them I just would not recall at the moment.

Q. Will you look at Defendants' Exhibit 77? Can you identify those as notes in the handwriting of Mr. Duckworth, Secretary?

A. I believe they are.

Q. Do those notes reflect substantially the order in which matters were taken up at that meeting?

A. Mr. Davis, I presume they do. I have not seen these [5524] before, and so I could not be positive about that, but I would assume that they do reflect the order in which things were considered.

Mr. Williams: I wouldn't presume or assume anything.

By Mr. Davis:

Q. You were at the meeting?

A. Yes, I was at the meeting, but I don't believe at this point I could remember the order in which things were taken up.

Q. If you look at Defendants' Exhibit 76, which are the minutes themselves, you will see the first business referred to after the approval of the minutes of the prior meeting is the financial review, and a report made by Mr. Leslie, is that correct?

A. Yes.

Q. If you look at Defendants' Exhibit 77, you will see that these notes refer to a report made by Mr. Leslie relating to the 1961 financing, among other things.

A. Yes, I see that.

*Tillinghast—Deposition*

Q. Look at page 2 of Defendants' Exhibit 77, which refers to the financing by the Met and the Equitable and the banks, totaling \$147 million. Do you see that?

A. Yes, I see that.

【5525】 Q. And then the note is "Same general plan as described at May meeting." Do you see that?

A. Yes.

Q. Is it a fact that at this meeting of June 21, 1961, Mr. Leslie advised the board that negotiations with respect to the 1961 financing were proceeding in accordance with the plan outlined to the May meeting of the board. That is what took place?

A. I believe so, yes.

Q. So that these communications which had been received from the Tool Company had not interfered with the financing plans, because they were proceeding in accordance with the May plan, were they not?

Mr. Williams: I object.

By Mr. Davis:

Q. Had anything happened to interfere with the financing plan as developed or presented to the May meeting?

A. Yes, Mr. Davis, and I believe I have testified about that at considerable length already.

Q. Can you explain what the board of directors were told on June 21st by Mr. Leslie which is recorded in the minutes as "Mr. Leslie advised that negotiations with respect to the 1961 financing were proceeding in accordance with the plan outlined to the May meeting of the board."

【5526】 In that connection I refer you to Mr. Duckworth's notes which read "Same general plan as described at May meeting."

*Tillinghast—Deposition*

My question to you is whether or not did the 1961 financing plan that had been described to the May meeting, whether it had changed in any material respect by June 21, 1961?

A. I will just have to refer you to my former very extensive testimony about the Prudential dropping out and all the things that happened at that time.

Q. I understand about the Prudential dropping out. My question now is whether it isn't a fact you, Mr. Leslie or the management of TWA, reported to the board at the meeting of June 1961, that the 1961 financing program was proceeding with the plan presented to the board at the May meeting?

A. With the exceptions noted, yes.

Q. The exceptions being that the Prudential was not to be included as a lender?

A. That was one of the exceptions, yes.

Q. What other exception of any material significance are you referring to?

A. I don't think there was any other major change other than that occasioned by the withdrawal of the Pru. [5527] dental.

Q. Now looking at Defendants' Exhibit 77, Mr. Duckworth's notes include the following:

"Except change in security requirements."

That thought does not appear in the minutes themselves. Will you tell us now what was said at this board meeting by Mr. Leslie or by you or anyone else, describing "Change in security requirements"?

A. I couldn't tell you that, Mr. Davis, without refreshing my recollection. My best recollection is that there were

*Tillinghast—Deposition*

some changes in the detail of the security requirements, but I cannot right offhand bring them to mind.

Q. You don't think they were material changes?

A. I don't think they were of major importance.

Q. In answering my prior question you said that you could not answer that without refreshing your recollection. What would you need to do in order to refresh your recollection, besides look at these documents?

A. Go back and find out just what the changes were, and see whether or not that refreshed my recollection as to any discussion of them at the board meeting.

Q. Who would be familiar with those changes of security requirements other than yourself?

A. Mr. Leslie, counsel.

【5528】 Q. Dillon, Read?

A. Probably, yes.

Q. But you have no recollection of what was presented to the board on June 21st relating to a change of security requirements?

A. Not at this time.

Q. May I try to determine this then? Were those changes in security requirements related in any way to communications received from Hughes Tool Company or any of its representatives?

A. I don't know, Mr. Davis. Until I knew what they were, I don't believe I could answer that question.

Q. At the present time you are not aware of any change in security requirements that was the result of any letter sent by the Tool Company to TWA or to the lending institutions or the voting trustees or the SEC?

A. That is correct.

Q. Will you go to the third page of Defendants' Exhibit 77? You will note on the top of the page, it apparently relates to what appears to [be] the fourth paragraph; the

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notes read: "Boeing progress payment \$13 million, postponed from July 1st to August 1st at 5 per cent interest cost TWA has paid 7 million plus to date."

Will you first identify the progress payments which [5528A] were postponed from July 1st to August 1st?

A. As I am sure you know, there were progress payments due under the contract. There was a payment of \$15 million due on July 1st which was postponed to August 1st, as I recall it, because of the incomplete nature of the negotiations relating to the contract.

[5529] Q. What caused this postponement of the progress payment?

A. I just said that as I recall it, the incomplete nature of the contractual negotiations.

Q. Between TWA and Boeing?

A. Between both TWA and Boeing, and TWA and the lenders, I believe. I am not absolutely sure of that, but I think that we were in a state of flux on both fronts.

Q. Can you describe the circumstances under which this five per cent interest was negotiated?

A. Well, it is a regular practice of Boeing to charge five per cent interest as a condition of the postponement of advance payment dates.

Q. In other words, there was no particular negotiation involved? It is a common practice which is generally recognized?

A. That is my understanding, yes.

Q. Who handled that part of the relationship with Boeing? Was that Mr. Leslie primarily?

A. I am not sure whether that was Mr. Leslie or Mr. Bummel. It might have been either of them.

Q. It was not a matter which was particularly taken up with you?

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A. I was aware of it at the time, and discussed it at [5530] the time, but at this point I can't remember whether Mr. Rummel or Mr. Leslie actually talked with Boeing about it.

Q. The minutes themselves do not reflect the next statement which appears in Duckworth's notes, namely "TWA has paid \$7 million plus to date."

What does that refer to?

A. Just what it says.

Q. I don't understand what it says. Does that mean TWA has paid \$7 million plus interest to date to Boeing?

A. No, it paid \$7 million on the contract.

Q. On account of a \$13 million progress payment, you mean?

A. No. We had made progress payments of \$7 million.

Q. When were those progress payments made?

A. The first one was made when the contract was signed, which was May 1st, and the next one was made about the 7th of June, if I recall correctly.

Q. Do you recall approximately the amount that was paid when the contract was signed in May, and the amount paid on or about the 7th of June?

A. I have a recollection that we paid \$700,000 in signing the contract. My recollection is it was about \$700,000. It was less than \$1 million. I believe the balance of it was paid in the first part of June.

[5531] Q. In other words, something in excess of \$6 million was paid by TWA to Boeing as a progress payment in the first part of June?

A. That's correct.

Q. Can you tell us whether that was paid before or after receiving that June 10th letter of the Tool Company?

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A. It was before, Mr. Davis, and I think it was either the 8th or the 9th. I know it was approximately a week after your technical presentation.

Q. Are you referring to my presentation on June 2nd?

A. Yes.

Q. And it was well after the receipt of the letter that the Tool Company wrote to the SEC, and the subsequent letter of May 26th or thereabouts to the lenders?

A. It was in June.

Q. Do you recall whether or not that \$6 million plus was paid to Boeing, whether that was paid in a routine manner, or was it the subject of a discussion or conference, either at TWA or with Boeing as to whether it should be paid or should not be paid?

A. As I recall it, Mr. Davis, that amount was originally due either on the 31st of May or the 1st of June, and it was postponed for about a week for the reason, at least in part, that you made your presentation on the 2nd of June, [5532] and we wanted Mr. Rummel and his people to review the situation in the light of what you had presented at that time, so that they could either confirm or withdraw their prior recommendation that we go ahead, or that we purchase the 26 planes from Boeing.

Q. Did you participate in the decisional process to pay this \$6 million plus to Boeing?

A. I participated in the decision. I indeed made the decision to go ahead with the Boeing program. So far as the actual payment of the money was concerned, Mr. Leslie took care of that, and I did not, as I recall it, make the decision to send them the check.

Q. Can you tell me how soon after June 2nd you made that decision?

A. Well, as I recall it, it was the end of the next week, either Thursday or Friday of the next week.

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Q. June 2nd was on a Friday?

A. Yes.

Q. Does that help you by referring to your calendar?

A. No, it doesn't help me, Mr. Davis. All I can say is that my recollection is that Mr. Rummel studied this matter with his people, and brought in a draft of a report on this subject. I remember because of the pressure of time, he brought his report in in draft form before it was [5533] finally completed. That, I think most likely, was Thursday of that week, and I discussed the matter with him, and decided to go ahead with the program.

Q. You notice on Wednesday, June 7th, you saw Mr. McCone at 9:30 in the morning?

A. I see that.

Q. And Cahill and others at 2:30 that afternoon?

A. I see that.

Q. Does that help you to identify as to when a decision was made? Do you think it was made on Thursday, the 8th?

A. Answering the first of your two questions, no, that does not help me with respect to when the decision was made. My best recollection is that it was either Thursday or Friday of that week that the decision was made.

Q. Look at the next page. At this time Mr. Duckworth is making notes relating to the presentation made by Mr. Cocke, which appears in the minutes under the heading "Operations Review." Under the heading "Domestic"—I am referring to the heading in Mr. Duckworth's notes. He has "New York-Chicago market penetration down 5 per cent. TWA up from 11 to 20 per cent."

Can you explain what that means?

A. I can tell you what the latter part means. That TWA's percentage had gone up from 11 to 20 per cent. At

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【5534】 about that time we substantially increased our jet service to Chicago, and as a consequence of that, the percentage went up from 11 to 20.

Q. That was the percentage of the entire market from New York to Chicago?

A. That's right. I don't understand what is meant by the prior note. It just doesn't make any sense to me.

Q. The minutes state that he, referring to Cocke, reported that "since the inauguration of Convair 880 aircraft schedules in the New York-Chicago market, the TWA share of the market had increased from 11 per cent to 20 per cent."

Can you tell us when the 880 aircraft schedule was inaugurated in the New York-Chicago market?

A. No, I can't, Mr. Davis.

Q. Can you explain the meaning of the note "San Francisco not so serious"?

A. Yes, the San Francisco traffic wasn't down to the extent that the Los Angeles traffic was down.

Q. That would be referring to New York-San Francisco versus New York-Los Angeles?

A. That's correct.

Q. Then we come to "Relations with Hughes Tool Company." If you turn the page, you will see Mr. Duckworth's notes. That was the report which you made to the board of 【5535】 directors?

A. That's correct,

Q. Look at Mr. Duckworth's notes, you will see he has a date of May 31st "Went ahead with Boeing plans. See executive committee minutes."

A. I see that.

Q. Those executive committee minutes are the ones we have already spent some time on in your prior testimony?

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A. That's correct.

Q. And then you refer to the technical presentation which had taken place on June 2nd?

A. That's correct.

Q. If you turn the page you will see under date of June 9th "Second payment made to Boeing."

Does that confirm what we were looking for a moment ago, that it was on June 9th that decision was made to go ahead with this \$6 million plus payment to Boeing?

A. If you will refer to the prior note here under the date of 6/8 which says "Rummel analysis and other data reviewed by equipment committee," it suggests to me that the decision may have been made on Thursday rather than Friday, although apparently the payment was actually made on Friday.

【5536】 Q. Can you identify what is the other data that was reviewed by the equipment committee?

A. I can't be altogether positive, Mr. Davis. I think that the other data probably consisted mainly of the original equipment report. The only things that I can remember at this point that we had were, I believe, on the 8th—I may be wrong about this—a draft, an almost final draft of the Rummel report, plus the original equipment report.

Q. You see that Mr. Duckworth indicated that your report to the board—that on June 13th there had been a management policy committee meeting?

A. Yes, I have already testified about that, I believe.

Q. And that this management policy committee reviewed the program and agreed to proceed with the Boeing program?

A. That's correct.

Q. Where are the minutes of that management policy committee meeting—do you know?

A. I suppose with Mr. Duckworth.

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Mr. Davis: Mr. Special Master, our records do not indicate that we have received the minutes of that meeting.

The Special Master: You can request them now.

Mr. Davis: I would like to request them now, with some explanation, if there is one, as to why they [5537] were not previously produced.

Mr. Williams: I will make inquiry.

A. It may be, Mr. Davis, that at this point in time no minutes were kept of the management policy committee meetings. This must have been either the first or second such meeting. It may be that we didn't actually start the practice of keeping minutes until a somewhat later date. I am not sure of that, but I think that is a possibility.

Q. I don't seem to be able to recall whether you covered that in your prior testimony or not, Mr. Tillinghast, but did you take up that June 10th letter at this management policy committee meeting of June 13th?

A. No, I am quite sure we didn't take up the June 10th letter as such.

Q. Without taking it up as such, did you discuss at that meeting the possible availability of four 880s, or thirteen 990s?

A. I just can't remember, Mr. Davis, whether we did or didn't. The matters set forth in there would not be matters which I would be disposed to take up with the management policy committee, except as it related to the question of equipment.

So far as the equipment side of it is concerned, it is entirely possible that I drew their attention to the so-[5538] called proposals that had been made, but I can't say that I have a specific recollection of having done so.

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Q. Can you tell us who attended that meeting?

A. I can't be sure from memory as to who was there and who wasn't there, but so far as I can recall, it was the whole management policy committee.

Q. Every one of them?

A. So far as I can recall, but I wouldn't be sure of it.

Q. At that time you had not begun to draft your reply to the June 10th letter?

A. I think not.

Q. Will you look at the minutes of the meeting itself, Defendants' Exhibit 76. If you turn to page 3 you will see where the sentence which reads "He" referring to you "further stated that generally Mr. Rummel who was present at the meeting analyzed the various points raised by Mr. Davis, and submitted a report on the subject."

To whom did Mr. Rummel submit a report?

A. I believe it was to me. Possibly it was to the flight equipment committee, but my best recollection is that it was to me.

Q. Was it a written or oral report?

A. A written report.

Mr. Davis: May I have marked for identification [5539] this report dated June 8th.

(Report dated June 8, 1961, marked Defendants' Exhibit 78 for identification, as of this date.)

By Mr. Davis:

Q. Let me hand you what has been marked as Defendants' Exhibit 78. It has a fly sheet dated June 8, 1961 which appears to be addressed to you from Mr. Rummel, with copies to Cocke, Hall, Leslie, Pierson, Rook and Rowe, and with the word "comments!" on it. Is this the written

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report you received from Mr. Rummel which is referred to in the minutes of the board meeting of June 21st?

A. I believe this is the final draft of this report, which was changed, as I recall it, just slightly in the final.

Q. I notice there is some handwriting on the fly leaf. Can you identify whose handwriting that is?

A. No, I cannot.

Q. Who wrote the word "Confidential" on it?

A. No, I can't identify that.

Q. I notice it is marked "Final Draft." There were prior drafts of this report, were there not?

A. I don't know, Mr. Davis. If I am correct in what this is, this is the first and only draft of it that I saw.

Mr. Davis: Mr. Special Master, we have not [5540] received, so far as we know, prior drafts of this document. May I request whether or not prior drafts have been produced to the extent which they may exist?

The Special Master: You may.

Mr. Williams: I will inquire into that.

By Mr. Davis:

Q. You see the persons to whom copies were sent of this report?

A. Yes, I do.

Q. They were at that time the members of which committee?

A. The equipment committee.

Q. Not the management policy committee?

A. That's correct.

Q. On the final draft I see Mr. Rowe's name does not appear, but the fly sheet includes Mr. Rowe. Was Mr. Rowe a member of that committee?

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A. No, he was not.

Q. Is this the report which formed the basis for the decision that was arrived at at the management policy committee meeting of June 13th?

A. This report in its final form was one of the things considered by the management policy committee. I should point out, Mr. Davis, that the management policy committee in one sense at least did not make a decision, because that is [5541] an advisory group rather than a group having decisional authority.

But the conclusion to which they came was based in part on this report.

Q. What else was it based upon so far as the relevant material?

A. The discussion of the members of the committee who were present.

Q. Looking at the fly leaf of Defendants' Exhibit 78, in the upper right-hand corner, you see "BAC" and then a number. Does that refer to a Boeing contract number?

A. No. It looks to me like airplane numbers.

Q. 131-B, 331-B and 720?

A. It looks very much like that.

Q. You don't know what the significance of it is?

A. Those are models of airplanes to which this refers.

Q. What does the word "negotiations" refer to—do you know?

A. No.

Q. Then continuing with Mr. Duckworth's notes, Defendants' Exhibit 77, does that indicate to you that you presented to the board a letter you received from Mr. Holiday under date of June 10th?

A. It does.

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[5542] Q. This date of June 12th, Mr. Duckworth's notes indicate the date on which you received that letter, isn't that right?

A. I guess that is what he had in mind.

Q. Did you also present to the board your reply of June 16th?

A. Yes.

Q. Will you describe what took place at that point. Did you undertake to describe at the meeting these three proposals that were contained in that letter of June 10th, or were all the directors already familiar with that?

A. Again, Mr. Davis, I have to point out that you have asked me several questions. Which do you want me to answer?

Q. I want you to describe what took place at the board meeting at this juncture when you referred to the letter of Mr. Holliday and your reply of June 16th.

A. I reviewed the letter which had been received. I summarized its contents. I advised them that I had replied to it. I advised them that no response had been received to my letter by the time of the meeting.

I then went on, apparently, to discuss the virtues and shortcomings of the proposals, and pointed out that a substantial increase in equity would be attractive, but that it appeared to me that the offer might be merely for the [5543] record.

I discussed or pointed out the fact that in addition to \$100 million of equity, we would need broadly \$200 million of other financing.

I believe, Mr. Davis, recalling it the best I can at this time, I said to the board that I didn't think that any of these proposals provided something on the basis of which we should take affirmative action, but that we should con-

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tinue to keep the door open on the equity proposal to see whether anything developed that might be of interest to TWA.

Q. All the directors had received your reply of June 16th, had they not?

A. I believe that's correct.

【5544】 Q. In connection with forwarding your reply of June 16th, you had not sent to all the directors a copy of the letter of June 10th?

A. No, and I would have to refresh my recollection as to whether you sent a copy of the letter of June 10th either. I am sure either you had sent it or else I sent it along with my reply.

I am sure I didn't send them a reply without the letter to which it referred.

Q. Now, I would like to have you describe what was said by any of the directors there present in connection with the remarks or presentation that you had made?

A. Before I say that, Mr. Davis, I should say one other thing that I said, and that was that I thought it would be a serious mistake were we to interrupt consummation of the Boeing program for the purpose of chasing what probably would turn out to be a will-o'-wisp so far as these so-called proposals of the Tool Company were concerned.

At this point I have some difficulty in recalling who said what, but I remember that Mr. Leslie discussed and described the inquiries that he had made of the financial institutions and Dillon, Read relative to the ability to obtain financing in the event of the termination 【5545】 of the voting trust, and read the letters that had been received.

Q. In your answer I think you said that you advised the directors that in your opinion it would not be advisable to interrupt or interfere with the Boeing program in order to chase a will-o'-the wisp, or something.

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Were you referring to the proposals contained in the June 10th letter?

A. Yes, I am.

Q. You understood at the time that proposal No. 1 did not require TWA to change its mind with respect to the Boeing program?

A. Yes, I am quite aware of that, Mr. [redacted], and I am equally aware of the fact that had we set out to negotiate something of that magnitude, it would have held up for a matter of months consummation of the Boeing financing, and unless and until we had something a lot more tangible than we had at that point, I wasn't about to recommend to the board that we interrupt and further jeopardize our Boeing financing at least so soon after having gone through the experience that we went through when the Prudential pulled out.

Q. Do you recall what comments or statements Mr. Breech made?

[5546] Q. My recollection is refreshed by a reference in Mr. Duckworth's notes here, to the effect that he felt it was in the best interest of TWA to continue the present course until the Tool Company presents a complete financing program.

Q. What do you mean by "continuing the present course"?

A. Of proceeding with the Boeing procurement. I believe, if I recall correctly, that Mr. Breech pointed out that he had had a number of discussions, one with Mr. Odum, and other discussions with other people whose identity I can't recall at the moment, suggesting that Mr. Hughes was prepared to do this or Mr. Hughes was prepared to do that, and in each case nothing came of it.

I believe he made the point if we interrupt the program we are on now, we wouldn't know whether we really have

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a new and different program, or don't, and he thought it would be a great mistake until we had—even to spend a great deal of time and effort on the matter—until we had a complete program which we could accept or reject.

Q. Do you recall what Mr. Sessel said on the subject?

A. No, at the moment, Mr. Davis, I have no recollection of Mr. Sessel having said anything. Yes, I do. I am mistaken. I believe Mr. Sessel repeated what he had told me over the telephone about the Bank of America, in response [5547] to his inquiring, having said that under certain conditions they might be willing to lend money without the voting trust, but that it was his opinion that in fact it wouldn't be possible actually to find a basis for doing this, and that he thought that the answer of the Bank of America was understandably influenced by the fact that they were the bankers for the Tool Company as well as for TWA.

Q. Do you recall whether either Mr. Sessel or Mr. Breech referred to the meeting they had, or to a meeting on June 16th, that they had with Mr. Hagerty and the insurance company lawyers?

A. Not that I recall, Mr. Davis, because I had no recollection of such a meeting until the other day here when I saw the memo that referred to it.

Q. Do you think you could state with some certainty that neither Mr. Sessel nor Mr. Breech described to the board the meeting or a meeting with Mr. Hagerty in connection with this June 10th letter?

A. I can only say, Mr. Davis, that I have no recollection of it whatsoever.

Q. If you look at the minutes themselves, page 3 of Defendants' Exhibit 76, it states that you pointed out in connection with proposal No. 1 that "An extremely impor-

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tant fact was the effect that the acceptance of such proposal, [5548] including the condition that the present voting trust be terminated, would have on the ability of the corporation to obtain additional needed financing, particularly additional debt financing."

Do you recall what you said to the meeting that is reflected by that portion of the minutes?

A. As far as I can recall, Mr. Davis, I pointed out that the \$100 million would not be sufficient to relieve us of the necessity of institution financing, not only for the present program, but for any short-range jet program that might be coming along.

I thought it vital in considering this thing to look at the totality of TWA's financial needs, and the possibilities of satisfying those needs if we went the route being proposed by the Tool Company.

Q. As I recall your prior testimony, you personally had not had any communication with the lending institutions in connection with this proposal No. 1, isn't that right?

A. Except as I have already testified.

Q. As I recall your prior testimony, you had this report from Mr. Leslie but you had not personally communicated with any representative of any lending institution?

A. I don't think that is correct, Mr. Davis.

[5549] Q. But you adverted to your understanding as to the attitude that the lending institutions were taking in connection with proposal No. 1?

A. I am not sure I adverted to it at this particular point, but from the first time that I read the June 10th letter up to and including the present time, it has seemed to me obvious that in appraising the desirability from TWA's standpoint of this proposal, one had to look at the totality of TWA's probable financial needs, and possible means of satisfying them, and that until and unless one did that, he

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couldn't possibly form a considered judgment on this so-called proposal.

Q. In connection with the remarks that you made, neither Mr. Breech nor Mr. Sessel supplemented these remarks by whatever experience they had had in any discussions which they may have had with the lending institutions, is that correct?

Mr. Williams: You mean they didn't speak at the board meeting?

Mr. Davis: Yes.

Mr. Williams: Did they speak at the board meeting after you had made these remarks?

The Witness: Yes, I am sure that both of them spoke, and as I testified just a moment ago, I recall [5550] Mr. Sessel having spoken about the position of the Bank of America.

By Mr. Davis:

Q. I am referring now to the position of the insurance companies. He didn't refer to that?

A. Mr. Sessel?

Q. Yes.

A. I have no recollection of his having referred to the position of the insurance companies, but possibly he did.

Q. How about Mr. Breech?

A. I don't recall either Mr. Breech having referred to the position of the insurance companies or the banks, except I have a faint recollection that after Mr. Leslie had summarized the communications with the financial institutions, Mr. Breech remarked that in view of the position they were taking, it looked as if we are a long way from having anything that we could really deal with.

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Q. Still referring to this page 3 of the minutes of the meeting, Defendants' Exhibit 76, in that same paragraph you notice the sentence which reads, "He", referring to you, "said that you had asked Mr. Leslie whether or not the corporation could arrange additional needed debt financing if the voting trust were terminated, as proposed in the [5551] letter of June 10, 1961, and that Mr. Leslie had reported that in his opinion this would not be possible under the circumstances."

Are you referring now to the June 19th report that you received from Mr. Leslie, which we have previously covered?

A. Yes, and my oral discussions with him.

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[5559] *Examination by Mr. Davis:*

Q. Mr. Tillinghast, will you refer to the minutes of the meeting of June 21st, which has been marked Defendants' Exhibit 76, and also to the handwritten notes of Mr. Duckworth relating to that meeting, which have been marked as Defendants' Exhibit 77?

A. Yes.

Q. Did you present to that board meeting the report of Mr. Leslie dated June 19th?

A. What report of Mr. Leslie dated June 19th?

Q. In your prior testimony we identified a so-called [5560] report from Mr. Leslie to you, which was dated June 19th. On page 3 of Defendants' Exhibit 76 the minutes state that you indicated that Mr. Leslie had reported that in his opinion this would not be possible under the circumstances.

Mr. Zeller: Are you quoting, or are you summarizing, and if so, where are you quoting from, or what are you summarizing?

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Mr. Davis: If you look at the last paragraph on page 3, the minutes indicate that Mr. Tillinghast pointed out something. That is the first sentence.

The next sentence, the minutes reflect that he, referring to Mr. Tillinghast, said that he had asked Mr. Leslie whether or not the corporation could arrange additional needed debt financing if the voting trust were terminated as proposed in the letter of June 10, 1961, and that Mr. Leslie had reported that in his opinion, et cetera.

By Mr. Davis:

Q. I show you Defendants' Exhibit 69, Mr. Tillinghast, which is a memorandum from Mr. Leslie to you, dated June 19, 1961. My question to you is whether or not at the board meeting you presented Defendants' Exhibit 69.

A. That would depend a little bit, I think, Mr. Davis, on what you mean by presented. To the best of my [5561] recollection at the present time, this was not read in its entirety. My recollection is that I had it with me, I referred to it, but I don't recall that it was read in its entirety, although I could be wrong about that.

Q. Were the letters received from the lending institutions presented to the meeting?

A. Well, again you get into the question of what you mean by presented. If I recall correctly, Mr. Leslie had all those letters and referred to them. I cannot recall offhand whether he read each of them. I note from Mr. Duckworth's notes that Mr. Leslie read the Dillon, Read letter, and that would be in accordance with my recollection.

My best recollection is that the other letters were referred to and were stated to be in the hand, but were not read in their entireties.

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Q. Did any of the directors, or Mr. Breech, make any comments, or say anything with reference to this Dillon, Read letter, Defendants' Exhibit 75, which you recall was read to the meeting?

A. I don't remember any specific comment addressed to that.

Q. Do you remember any comment with respect to Mr. Leslie's report or your description of his report reflected [5562] by the minutes of the meeting, which appear in the last paragraph on page 3?

A. I don't understand your question. Would you repeat the question, please?

(The question was read.)

Mr. Zeller: I am confused too, Mr. Davis. Do you mean a discussion with respect to the report itself?

Mr. Davis: No. I am particularly referring to what apparently was presented to the meeting, namely, that if the corporation were to accept the \$100 million of additional equity, in his opinion, or in Mr. Leslie's opinion, or in Dillon, Read's opinion, it would not be possible to arrange additional needed debt financing.

My inquiry is whether any of the directors there present questioned or remarked or commented on the presentation of that information.

Mr. Zeller: And in particular, the presentation of the Leslie report, is that right?

Mr. Davis: That's correct.

A. Mr. Davis, I find it difficult or impossible to recall specific comments by specific people, but my recollection is that the consensus was that obviously this [5563] proposal

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of equity financing of \$100 million had to be looked at in terms of the total needs of the company and its ability to obtain debt financing in the event of termination of the voting trust.

It is also my recollection that the consensus was this so-called proposal was more for the record than real.

Q. When you say "the consensus was," I don't understand what you mean. I appreciate you not being able to identify the words used by the various directors, but can you identify what the directors as a group said, what Mr. Brech said, what Mr. Sessel said? Was it put to a vote?

A. Mr. Davis—

Mr. Zeller: There are a number of questions there, Mr. Davis. I suggest we take them one at a time.

Mr. Davis: I would like to have the witness give us his total recollection as to what in fact transpired in connection with the presentation to the board of this report, as to the ability of TWA to obtain the needed financing, [illegible] financing, in the event Proposal No. 1 were to be accepted.

Mr. Zeller: I take it that is precisely what the witness has just done in his last answer. If you have a specific question, why don't you ask him?

■5564■ Mr. Davis: My question is, I do not understand what he means by saying "it was the consensus."

Mr. Zeller: Are you asking him to explain what he means when he says "it was the consensus"?

Mr. Davis: Yes.

A. I mean merely, Mr. Davis, as best as I can recall it, not being able to recall specific statements by specific

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people, the general opinion or attitude was as I have testified.

Q. But you have no recollection of any statement made by any particular director on that question?

A. I believe that Mr. Breech made some statement to the effect that the purpose of this was to put us on the spot, and to divert us from going ahead with the Boeing program. Somebody, and I think it was Mr. Breech, said that if Toolco was serious about this they ought to bring in a complete financing package that took care of the debt side of it as well as the equity side of it.

I believe Mr. Leslie said something to the effect that only the Tool Company could make the necessary arrangements to provide other and different debt financing, and it was idle for TWA people to try to figure out what could be done if Hughes were prepared to do certain things, such as pledging certain assets, and so forth and so on.

【5564A】 Beyond that I have great difficulty in associating any particular statements with particular people.

【5565】 Q. You do not recall any statements made by Mr. Sessel with respect to the attitude of the lending institutions towards Proposal No. 1.

A. Not beyond that to which I have already testified.

Q. As I recall your prior testimony, you said that Mr. Breech did not refer to or describe a meeting with Mr. Hagerty, which presumably had taken place a few days before?

A. I have no recollection of any such statement.

Q. Referring to Defendants' Exhibit 77, the Duckworth notes, the page which is marked 756 in the lower left-hand corner, you will notice at the top of that page the statement "Any substantial increase in equity is attractive," and then it goes on.

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Who said that—do you know?

A. I believe I did.

Q. The next item in Mr. Duckworth's notes reads "In addition to \$100 million TWA would require additional \$200 million other financing."

A. Yes.

Q. Is that something else that you said?

A. I believe so.

Q. Would you explain this additional \$200 million of other financing that TWA would require?

【5566】 Mr. Zeller: You mean you are asking him what he had in mind at the time he said that, is that right?

Mr. Davis: I am not so sure of that. It's what explanation he gave, if any.

A. I don't recall, Mr. Davis, that I gave any particular explanation of that. You will recall, I am sure, that we were talking about \$165 million on the 1960 jet program, and we were talking about \$147 million on the 1961 jet program, and together those add up to something over \$300 million, and if you subtract \$100 million, you get approximately \$200 million.

Q. In other words, you are assuming, or the statement that you were making was to the effect that if Proposal No. 1 were accepted, and the Tool Company put \$100 million of additional equity money in, this debt financing would not be available to TWA?

A. No, Mr. Davis.

Mr. Zeller: I object to that.

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By Mr. Davis:

Q. You already had arranged the \$165 million and \$147 million?

A. We were just in the process of finalizing the \$147 million. Both of those were conditioned upon the voting trust. Your \$100 million was conditioned upon the [5567] termination of the voting trust. We were told that these funds would not be available if the voting trust were terminated, and we had the question of what about that other \$200 million.

Q. Is it fair to say that what you explained to the board was that if Proposal No. 1 was accepted, based upon what you have already described as the attitude of the lending institutions, TWA would have to find another \$200 million?

A. Whatever the attitude of the financial institutions was, if we received another \$100 million from the Tool Company, that left \$200 million that we had to find somewhere else, and which had to be obtained by debt financing.

Q. The telegram from Mr. McCone, was that presented to the meeting?

A. My recollection is that it was read to the meeting.

Q. It was read to the meeting?

A. Yes.

Q. Was there any comment made by any of the directors present to the substance of the remarks of Mr. McCone as reflected by that telegram?

A. Could I see the telegram to refresh my recollection, Mr. Davis, please?

Mr. Davis: Let the record show I am handing the witness Defendants' Exhibit 21.

[5568] A. I don't recall any particular discussion about the telegram, Mr. Davis, except that I believe that I

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commented on the last portion having to do with the possible obligation on the part of TWA to take the 880s and 990s, and I believe stated with respect to that, that I had made several very thorough investigations as to the possible existence of liability, and I convinced myself that there was no such obligation, and I believe Mr. Rowe who was at the meeting confirmed that point of view. Beyond that I don't recall any particular discussion of the telegram as such, most of its contents having been the subject matter of the prior discussion about the Toolco proposal.

Q. Do you recall whether or not that telegram was read or presented to the meeting before or after these investigations that you have described as consensus of opinion as to the purpose of the June 10th proposal?

A. My recollection, Mr. Davis, is that this came rather towards the end of those expressions.

Q. These notes of Mr. Duckworth's reflect what took place at the meeting in the order in which it took place, do they not?

A. So far as I know, Mr. Davis, that's correct, yes.

Q. And you see at the bottom of the page which has 758 at the lower left-hand corner, there is reference to [5569] remarks by Mr. Breech?

A. Yes.

Q. Are those the remarks that you previously attributed to Mr. Breech, or do you have a recollection of Mr. Breech's remarks other than as appear here?

A. I could not say, Mr. Davis.

Q. You notice on that same page there is a reference to remarks by Mr. Slack. Do you recall Mr. Slack's comments?

A. My best recollection of Mr. Slack's comments are that he very much doubted that this proposal was made in good faith, but that he felt that whether or not it was,

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we should carefully consider and examine the proposal as if they were in complete good faith.

Q. Will you turn to the preceding page of Mr. Duckworth's notes, that has the number 757. You will see that page is headed "Possible Proposed Action."

A. I do.

Q. Who outlined "Possible Proposed Action"?

A. I am not absolutely sure, Mr. Davis. I have been trying to remember that. It may have been Mr. Breech, but I would not be positive about that. As I recall the meeting, there was a statement by somebody—I think Mr. Breech—of proposed action that the board should take, and just about the time that the proposed action was stated, the [5570] discussion drifted on and off into other matters, and that proposed action got lost in the shuffle and was never acted upon.

Q. You note that Mr. Duckworth's notes under the heading "Possible Proposed Action" indicate notes as to action by Toolco, action by TWA, action by CAB?

A. Yes.

Q. Next to proposed action by Toolco, the following appears "Can possibly arrange financing." Will you describe what that refers to?

A. I think the thrust of that, Mr. Davis, was that TWA didn't feel under the circumstances that it could possibly arrange the needed debt financing under the proposed circumstances, and that therefore we should go back to the Tool Company and say in effect that it would be necessary for them, if this was to be entertained, to arrange a complete package that would include the debt financing as well as the additional equity.

Q. Was it Mr. Leslie's remarks that possibly the Tool Company could arrange this additional financing?

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A. As I recall what Mr. Leslie said, it was to the effect that only the Tool Company could work out the necessary arrangements, and possibly they could if they really wanted to, but that was something that only they could [5571] determine and not TWA.

Q. The next item under possible proposed action by TWA "Should TWA take time to attempt to develop program to support Toolco proposal."

Then there is an additional note "or support Toolco in getting CAB."

Will you describe who described the possible action by TWA raising the question? What does this note refer to?

A. I am not sure that I can be altogether precise about that, Mr. Davis, but I believe that someone, and probably Mr. Breech, was raising the question of whether TWA could justify the taking of the time and going to the efforts to go to the financial community to explore further the development of a program of debt financing which would support the Tool Company proposal.

As I remember the purport of what he said, it was to the effect that this was something that Toolco should do, and it wasn't something that TWA ought to spend a great deal of time and effort on in view of the circumstances that existed.

Q. Do you recall what the other directors said, if anything, in connection with this suggestion?

A. Not beyond what I have already testified to, Mr. Davis.

[5572] Q. The third item is "Possible Proposed Action By CAB," and there the note reads "Possibility CAB would raise public interest question if Toolco should force cancellation of trust agreement."

Do you recall what that note referred to?

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A. That refers to the same thing I referred to in my letter, I believe, Mr. Davis, and that is the obvious question of whether in the event all of this could be achieved, which appeared doubtful, the Civil Aeronautics Board would, in view of the statements in its last order, approve it.

Q. Does this note again refer to remarks made by Mr. Breech primarily?

A. If I am correct that Mr. Breech was the one who was posing these questions, yes. My recollection is that he started by suggesting that he would take a try at proposing appropriate action, and it then drifted into a discussion rather than really a proposal of action.

Q. Do you recall your saying anything to the directors as to this area, as to the possibility of what the CAB might do if the Tool Company should force cancellation of the trust agreement?

A. Of course, Mr. Davis, this was in my letter, a copy of which I had sent to each of the directors. I have [5573] no independent recollection of having raised the point at the meeting, but I may well have. I just don't recall.

Q. Do you recall what was said either by Mr. Breech or anyone else that Mr. Duckworth is describing as "If Toolco should force cancellation of trust agreement"? I am particularly referring to the use of the word force."

A. No, I have no recollection of the word "force cancellation of the trust agreement" being used. Maybe it was. I just have no recollection of it.

Q. Look at page 4 of the minutes of the meeting, Defendants' Exhibit 76. I call your attention to the paragraph which starts "The meeting was advised that Mr. Chester Davis," et cetera. The next sentence reads "After discussion the directors concluded that in view of Mr. Davis' numerous and lengthy prior communications to the Board

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and the management, no purpose would be served by granting Mr. Davis' request."

I believe you previously testified that these minutes were prepared by Mr. Duckworth?

A. I believe that's correct.

Q. You don't recall having revised them?

A. No, I do not, Mr. Davis.

■5574] Q. Can you identify the "numerous and lengthy prior communications to the board" referred to in that portion of the minutes?

A. I might say that this refers to numerous and lengthy prior communications to the board and the management. I think they need to be dealt with together. The first lengthy communication was that at the May meeting of the board, at which time you appeared and spoke at some length.

You had prior to this time sent, I don't know how many letters and telegrams.

Q. Excuse me for interrupting you at this point.

Are you referring to any letters or telegrams other than those that you have already identified?

A. I believe not. You had had numerous conversations with Mr. Reed and Mr. Rowe. We had had the meeting of June 2nd, at which you held forth at considerable length, as I recall it, for approximately two hours.

I think that is principally what we had in mind, Mr. Davis.

Q. Your last reference is to the June 2nd presentation relating to the 990s?

A. That's right.

Q. In these communications with Mr. Reed and Mr. Rowe, can you identify the conversations to which you are having ■5575] reference?

A. I may not be able to identify them specifically, Mr. Davis, but my recollection is that at the May meeting of the

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board of directors, after you left, Mr. Reed and Mr. Rowe left to go into session with you, and that from then through the period which when you were seeking to block the effectiveness of our registration of the subordinate debentures, and after that, through the period we have been discussing here, up until July 21st, that you were in conversation with Mr. Reed or Mr. Rowe at least several times a week, and perhaps daily.

Q. You notice there is a resolution, or at least at the bottom of that page 4 there is a statement as to the sense of the meeting.

Refer to the minutes, Mr. Tillinghast. Is it your understanding that this was also prepared by Mr. Duckworth?

A. I am not altogether sure, Mr. Davis. My guess would be that Mr. Duckworth and Mr. Rowe collaborated on this, although I could not at this point tell who prepared the first draft.

Q. Was it the sense of the meeting that this letter of June 10th and the proposal contained was an interference with the affairs of TWA?

Mr. Zeller: Which paragraph are you referring [5576] to, Mr. Davis?

Mr. Davis: I am asking the question.

A. I think the consensus was, Mr. Davis, that this was a step in the Tool Company's efforts to prevent the Boeing transaction from going through.

Q. But there was no resolution to that effect, or statement made that it be recorded as the sense of the meeting?

A. I believe that's correct.

Q. Looking at paragraph 1 at the bottom of page 4 of the minutes, it reads:

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"The corporation could not at this time accept proposal No. 1."

I am emphasizing the words "at this time." Was it the sense of the meeting that it could accept proposal No. 1 at some other time?

A. Only if certain other conditions were satisfied, which had not been satisfied at this time.

Q. You are now referring to what you previously testified about the need for \$200 million?

A. Yes.

Q. You will notice at the bottom of page 759 of Mr. Duckworth's notes, Defendants' Exhibit 77, the photocopy has some of the words at the bottom of that page chopped off. [5577] I believe the original reads:

"Counsel to confer with Davis for the purpose of developing a written proposal to present to board."

I find no reference in the minutes of the meeting itself to any decision that counsel for TWA was to confer with Davis for the purpose of developing written proposals to present to the board.

I am asking you if you can explain why the minutes of the meeting do not reflect that decision or action.

A. Well, I believe, Mr. Davis, that it is covered in the minutes on page 4 in the middle paragraph where, in the third sentence, it reads:

"However, Mr. Rowe was requested to talk to Mr. Davis to determine whether he had any specific additional information or proposals that he wished to submit to the board."

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Q. That refers to Mr. Rowe being asked to leave the meeting to speak to Mr. Davis who was waiting outside, in order to answer questions if anyone had any questions? Is that what is referred to?

A. That's correct.

Q. Am I to understand from your testimony that the directors there present expected Mr. Rowe to go out and [5578] come back with some written proposals?

A. The directors asked Mr. Rowe—I believe it was the chairman who asked Mr. Rowe to go out and talk with Mr. Davis and to find out whether he had any new information or new proposals, and if he did, to please put it in writing so we would know exactly what they were and we could consider them.

Q. The minutes as written up on page 4 read as they read, but I read those, Mr. Tillinghast, that Mr. Rowe reported back merely that Mr. Davis did not have any writings to submit to the board at that time.

Mr. Duckworth's notes, if read literally, read that counsel for TWA was to confer with Mr. Davis for the purpose of developing written proposals to present to the board.

A. I don't believe, Mr. Davis, that Mr. Duckworth's notes are in that regard anything but rough and hastily written notes.

Q. The thing I am trying to establish, Mr. Tillinghast, is simply this: Did, so far as you know, TWA make an effort with any representative of the Tool Company to develop written proposals for submission to the board, or to present to the board?

A. Yes, Mr. Davis. In my letter of the 16th, I believe [5579] I suggested that you let us have any proposals you might have, and Mr. Rowe, when he was sent out to confer with you, was asked to see whether you had any additional

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information or proposals as requested in my letter, and to please have them put in writing.

Q. Subsequent to this meeting on June 21st, so far as you know, did TWA or any of its representatives or counsel make an effort to develop written proposals for submission to the board?

A. Not so far as I know. I believe they talked with you several times, and made it clear that we would entertain with seriousness any proposals that you might find it possible to submit, that might meet the problems that we had outlined.

Q. You are referring now to the conversation that Mr. Rowe had during the course of the meeting, which he reported to the board when he returned, as reflected on page 4?

A. No. I am referring to various conversations which they had with you subsequent to the meeting of June 21st.

Q. When you say "they," who are you referring to?

A. Mr. Rowe and Mr. Reed.

Q. Will you identify your information as to such conversations relating to the development of proposals to present to the board relating to the June 10th letter?

A. I know nothing about the development of proposals [5580] as such. We repeatedly tried to make it clear, and it is my understanding that they so stated to you, that we were prepared to give serious consideration to any proposal which you might wish to develop that would meet our problems.

As I recall it, we did not direct them to try to develop proposals, but rather to make it clear to you that if you had a proposal that you thought might be acceptable by TWA, that we would give it the most serious consideration.

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Q. Now, turning the page of Mr. Duckworth's notes—the page should be page 760—you see the heading, "Back to 6-A"?

A. Yes, I do.

Q. That refers back to the item on the agenda of action?

A. Yes.

Q. You see the notes read:

"Reported Rowe discussion with Davis, and he will put his comments to board in writing."

A. That's correct.

Q. Did he put his comments to the board in writing?

A. You should know.

Q. I am referring to Mr. Rowe.

A. You are "he."

Q. Let me see if we understand Mr. Duckworth's notes the same way, Mr. Tillinghast.

On that day Mr. Davis did not make any comments [5581] to the board, did he?

A. No. I believe what happened was that Mr. Rowe returned. He reported his discussion with you and said that you would put your comments to the board in writing.

Mr. Zeller: Let me invite your attention, Mr. Davis, to the fact that the minutes seem to me very clearly so to state on page 4.

Mr. Davis: I do not want to argue this out, Mr. Zeller.

Mr. Zeller: I did not mean to argue; I thought you were looking for a fact.

Mr. Davis: I am quite familiar with what transpired at that board meeting. As the testimony has already developed, or one of the letters that has not

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yet been marked but will be marked in a moment—I was outside the board meeting, and information was given to the board that I was prepared to comment to the board or answer questions with respect to this June 10th letter proposal, et cetera.

During the course of the meeting Mr. Rowe came to me and asked me if I had anything in writing to submit to the board, and I said no, but I was prepared to talk to them.

Then he advised me that the board did not have [5582] any interest or any questions to ask me orally.

The minutes reflect exactly what took place—that Mr. Rowe left and came back and returned and reported that.

That seems to me to be quite different from a suggestion which so far as I know the Tool Company never received, that the Tool Company was to develop any more proposals to submit to the board.

Mr. Zeller: Mr. Davis, you and I do not read the English language the same way because what I am looking at:

"Mr. Rowe stated that upon being requested to advise him of anything Mr. Davis wished to transmit to the board, Mr. Davis declined to do so, but indicated that he would put what he had to say in writing and submit it in that form."

Mr. Davis: That is quite clear to me. What is not clear to me is the action of the board, if it was action, that proposals were to be developed.

However, I am clear on what the facts are. I want to be sure I understand what took place.

(Whereupon, a short recess was taken)

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【5583】 Q. Continuing with Mr. Duckworth's notes, Mr. Tillinghast, which are Defendants' Exhibit 77, you see the notes that he has on the resolution?

A. Yes, I do.

Q. Numbered 1, 2 and 3. No. 1 would seem to refer to Proposal No. 1, is that correct?

A. I am not sure that deals entirely with Proposal No. 1. Let me take a look.

Q. The note is "Give consideration to any sound program to increase capitalization subject to compatibility with overall financing program."

That refers to Proposal No. 1 of the June 10th letter?

A. I believe it does.

Q. The next item is "Refer advice of financial advisers." That refers to the Dillon, Read letter that was presented at the meeting, does it not?

A. I presume so, yes.

Q. And then the next note is "Without interfering with orderly program"?

A. Yes.

Q. What is "Without interfering with orderly program"?

A. I believe that refers to the avoidance of interference with the orderly progress of the jet equipment 【5584】 program.

Q. The notes on the resolution are now reflected in the minutes, Defendants' Exhibit 76, on page 4, under Item 1, at the bottom of the page, isn't that right?

A. I believe so, yes.

Q. You see next to Item 2 the notes of Mr. Duckworth re "Motion to support management position on 2 and turn down offer." That indicates that someone made a motion to support the management position on Proposal No. 2, and turn down Proposal No. 2, isn't that correct?

A. That's correct.

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Q. You stated the position of the management, or did Mr. Breech?

A. I believe I have already testified to that, Mr. Davis.

Q. You were the one at that meeting who stated the position of management?

A. Yes.

Q. And that was to turn down Proposal No. 2, isn't that right?

A. That's correct.

Q. And that management position, for the reasons that you have already described?

A. Yes.

【5585】 Q. None others?

A. I would have to go back and refresh my recollection as to whether I have described all of the reasons. I believe I have adequately described them, but I am not absolutely sure.

Q. Can you, without repeating what you have already testified to, at least identify the major or principal or basic reasons for the management position to turn down Proposal No. 2?

Mr. Zeller: I object to this, your Honor. I think it has already been testified to. I think the only proper thing would be whether the witness has anything else in mind to add to that.

Mr. Davis: I did ask him that.

Mr. Zeller: He said he didn't have anything else in mind at this time.

Mr. Davis: I thought he said he would have to read it.

Mr. Zeller: I understood him to say that he didn't have now clearly in mind what he had testified to earlier. I submit that is no reason to take him back

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to what he testified to earlier, Mr. Special Master. I think the proper thing to do is instead of rehashing all that testimony, ask him whether he [5586] has anything else in mind, and if he hasn't, let us go on to something else.

Mr. Davis: I am not asking him to rehash any testimony or anything he previously testified to. I am asking him, if he can now, to identify the major bases for the position of management for turning down Proposal No. 2.

By Mr. Davis:

Q. Can you identify them and say what the principal ones were, if there was more than one?

A. The principal reason, Mr. Davis, was that we did not want model 990 aircraft.

Q. This was without any reference to the possibility of acquiring four 880s?

A. Quite apart from the 880 question, we had come to the conclusion that it would not be in the interest of TWA to acquire 990 aircraft.

Q. With respect to Proposal No. 3, the motion made, according to Mr. Duckworth's notes, was "To support management. That door opened, but without more details cannot consider."

What was the management position that this refers to?

A. I think the position stated in my letter of June [5587] 16th.

Q. The minutes of the meeting on page 5 refer to what is entitled "Acquisition of Boeing flight simulator, additional funds for construction at Kansas City," and under that a motion was adopted to acquire Boeing flight simulators at a cost of \$1,386,100. Was this flight simulator an item relating to the 1961 Boeing program?

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A. Yes. It was an item relating to the 1961 program, but not exclusively.

Q. Not exclusively?

A. That's correct.

Q. Can you explain what this item is that the directors acted upon after giving consideration to the June 10th letter?

A. This is just what its name implies—a Boeing flight simulator, to be used in Kansas City for training purposes, with respect to all Boeing aircraft.

Q. TWA did not have one before that?

A. Yes, we had one, but wanted another.

Q. Was this needed because of the progress that had been made or the plans of TWA relating to the acquisition of additional Boeings?

A. In part, but as I recall it, it wasn't exclusively for that reason.

【5588】 Q. Now will you refer to page 10 of the minutes of the meeting? Part of the report of the president—there is an item which appears under "A"—"Jet aircraft program. The status of the Boeing long-range aircraft program was reviewed."

You reviewed that to the board, did you not?

A. I did.

Q. What was the status of the Boeing long-range program which you described to the board? What did you report to them with respect to that Boeing long-range program?

A. I believe that I just reviewed the status of it, where we were. If I recall correctly, between the prior meeting of the board and this meeting of the board I had been to Seattle, where I had looked at the 727 mock-up of Boeing, and had talked with them about the 727 program.

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Q. You were referring to what has been described as the 1961 Boeing program?

A. I was talking about two things here, I think. One, the status of the long-range program, and where we stood on that. The second was—

Q. You mean long-range program or long-range aircraft?

A. Long-range aircraft program. I also talked about the requirements for short-range jet aircraft.

【5589】 Q. And the substance of that report was that it was progressing satisfactorily, or can you identify the substance of your report on the status of the long-range aircraft program and the short-range aircraft program, if there was one?

A. I believe that this has been partly summarized earlier in the meeting, and I did not repeat here what I had already covered. My recollection is, Mr. Davis, that this was pretty summary so far as the long-range program was concerned, and dealt more with the short-range problem than the long-range problem.

Q. What was the nature of your report then on the short-range aircraft program?

A. As best I recall it today, I stated that I had been to Seattle and talked with the Boeing people. I had seen the mock-up of the Boeing 727. That this was one of the planes to which serious consideration needed to be given with respect to the short-range jet program of TWA. That unless and until we had the long-range program all wrapped up and out of the way, it was too early to talk definitively about a short-range program, what the obvious financing problems involved, but that we were beginning to make preliminary studies as to the relative virtues of different planes, and that I would at a later meeting of the board

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【5590】 bring some more definitive statement to them as to what I felt we should do about the short-range program.

I believe, partly refreshed by the minutes here, that I also discussed the fact that we had an option under the Boeing purchase agreement to obtaining—we had an option for ten additional 707 aircraft, with a protected delivery position. We were supposed to act on that, it says here, by the end of October, although my recollection is that it was earlier than that. In any event I recall that we discussed obtaining an extension of the option period. It was my recommendation that we do this even though I was doubtful that we would want in fact to exercise the option for the additional ten.

Q. I am particularly interested in that portion of the minutes which state "And that in view of the current financing situation, the possibilities of leasing this type of aircraft were being investigated."

First, will you identify the current financing situation to which you apparently referred?

A. I think by the current financing situation I was referring to the fact that we probably had as much debt incurred or committed for as would be wise, and that in all probability further debt financing would require some increase in equity, and that it was doubtful that we 【5591】 could just go out and borrow money for further jet programs of any magnitude.

Q. You were not referring to the anticipated losses in operations?

A. Not particularly, Mr. Davis, I think.

Q. What leasing arrangements were being investigated?

A. I think probably, Mr. Davis, that at this time the leasing possibilities with respect to the Caravelles had become the subject of some discussion, and if I recall cor-

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rectly, we were feeling out Boeing at this time as to the possibility of leasing 727s.

Q. Had you discussed that to the point where terms were being discussed?

A. No, I don't think so. I think this was in the very preliminary stage in June.

Q. Refer to Mr. Duckworth's notes, Mr. Tillinghast, at the page marked 762, which appears to cover what you have been describing—under the heading "Report of President, Jet Aircraft Program," he has first "Short-range problem"?

A. Yes.

Q. What was the short-range problem?

A. I have testified to that at great length, Mr. Davis.

Q. You are referring now to the short-range problem?

5592 A. The problem of short-range jets—the need for short-range jets.

Q. The next item is "Financing problems prohibited purchase"?

A. Yes.

Q. This is what you just identified a moment ago that in view of the amount of debt, or difficulties in debt financing, TWA was not in a position to consider purchase of aircraft?

A. Yes. You will recall, Mr. Davis, from my prior testimony that at the end of May, when the Prudential pulled out of our financing program, and I was successful in arranging for greater commitments from the Equitable and the Metropolitan, that Mr. Keehn of the Equitable made it clear that that was the bottom of the barrel so far as they were concerned. It seemed to me clear in view of the Prudential's withdrawal, what Mr. Keehn had said, our unsuccessful efforts to find other insurance companies to participate in such a financing, that we were substantially at

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the end of the road so far as debt financing was concerned.

Q. And therefore in order to be in a position to acquire short-range jets, it would be necessary to either lease or do some equity financing?

【5593】 A. That's correct.

Q. Did you discuss at that time in connection with current financing situation, the possibility of doing some equity financing?

A. I don't think in this point of time, Mr. Davis, we got even down to any real discussion of the possibilities of equity financing. That came along later.

Q. The next item is that you reported on investigating the leasing possibilites. Did you describe that as a desirable approach from TWA's point of view, of leasing aircraft rather than developing a program through equity financing, or otherwise, of purchasing aircraft?

A. I think we described it merely as one of the possibilities that we were investigating.

Q. The point I am trying to get at is whether or not at that meeting you indicated to the board that from TWA's point of view it would be desirable to be able to lease.

A. No, I don't think so.

【5594】 Q. What does "July report" mean in the last line?

A. I don't know, Mr. Davis. Perhaps it means I was going to report on it again at the July meeting, but I really don't know what it means.

Q. Was it supposed to be a report on the leasing possibilities, or was it a general report that was to be made in July?

A. I am not sure what it means, but if it does refer to reporting on the subject in July, it was a general report as

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to the short-range program rather than any specific report as to leasing.

Q. Do you recall making a July report?

A. I am sure that I did. I am sure I have discussed equipment programs at substantially every meeting of the board, at least through this period of time.

Q. It was not a written report?

A. No.

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【5622】 Q. Mr. Tillinghast, you have identified Defendants' Exhibit 11Q as an instance of an interference by the Tool Company in the affairs of TWA. Will you identify or describe the portions of Defendants' Exhibit 11Q which you claim constitute or constituted interference in the affairs?

A. Mr. Davis, there are no particular parts. As I have said several times before, this was, as I saw it, one in a series of communications aimed at preventing and 【5623】 interfering with our going ahead with the Boeing program.

Q. There is no particular part of this letter which you feel constituted a particular interference?

A. No part more than any other part.

Mr. Davis: May I have marked for identification as Defendants' Exhibit 79 this letter from Mr. Rowe addressed to Mr. Davis, dated June 22, 1961.

(Letter from Mr. Rowe to Mr. Davis, dated June 22, 1961, marked Defendants' Exhibit 79 for identification, as of this date.)

By Mr. Davis:

Q. I hand you what has been marked Defendants' Exhibit 79. Can you identify that as a letter from Mr. Rowe to Mr. Davis?

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A. That appears to be, yes, Mr. Davis.

Q. Was this communication discussed with you at all?

A. I believe it was.

Q. Do you know of any other communication for or on behalf of TWA to the Hughes Tool Company, or any of its representatives, advising them of the action taken by the board at its meeting of June 21st?

A. I would have to check the file to be certain, Mr. Davis, but offhand I can't recall any written communication other than Defendants' Exhibit 79.

【5624】 Q. Can you think of any oral communication relating to advising the Tool Company of the action taken by the board?

A. As I have said several times before, I know that Mr. Rowe and Mr. Reed were having conversations with you from time to time, and I believe that the action of the board was a subject of discussion between you and Mr. Rowe. Perhaps I am wrong, but I think that is the case.

Q. You referred to this more than once, Mr. Tillinghast. May I ask you what your understanding of what the subject of discussion was between Mr. Rowe and Mr. Reed and Mr. Davis?

A. The controversy between Hughes Tool Company and TWA.

Q. But no more than there were discussions relating to the controversy?

A. What more could there be?

Q. You keep referring to your being informed that advice or information was communicated to the Tool Company by reason of conversations taking place between counsel for TWA and counsel for the Tool Company. What I am asking you now is, can you identify or are you aware of or have you been informed of any particular communication,

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or is it your understanding that any particular advice relating to the proposals covered by the June 10th letter, was conveyed [5625] by either Mr. Rowe or Mr. Reed to the Tool Company?

Mr. Zeller: Your Honor, I think there are about three questions wrapped up in there. If he is asking just a simple question, whether the witness now has any specific recollection of any communication other than this, I have no objection to it.

Mr. Davis: If your Honor please, I asked him if he was aware of any. He said none other than conversations. I asked him what conversation, and he said conversation as to the controversy. Now I am asking him in one question, if I may, whether or not he is aware of any communication.

The Special Master: Why don't you ask him to describe any communication, whatever it was, that he knows about?

Mr. Davis: That is what I was trying to elicit from the witness.

By Mr. Davis:

Q. Will you describe whatever communication you were aware of, which took place between anyone, Mr. Rowe or Mr. Reed representing TWA, to anyone representing the Tool Company, with respect to the proposals of the June 10th letter, or the action taken by the board?

A. I recall merely, Mr. Davis, that Mr. Rowe and Mr. [5625] Reed were in frequent conversation with you at that time, and that Mr. Rowe, I believe I recall, had talks with you about the action of the board, and explained to you the board's position.

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I recall that Mr. Rowe and you had an argument over extending the date on the closing of the subordinate debentures and over the interest that was payable on the subordinated debentures.

It is my impression today, as I say, these conversations with you were practically daily, and that both Mr. Reed and Mr. Rowe were explaining to you and discussing with you the position of TWA.

Exactly what they said, I am not sure that I can recall at this moment to the extent that I may have known, but I am sure they were discussing these things with you, and advising you of TWA's position.

Q. You are not aware of any communication relating to the action taken by the board other than Defendants' Exhibit 79?

A. I believe I recall Mr. Rowe telling me he discussed it with you and explained it to you.

Q. Do you recall what Mr. Rowe told you?

A. Not beyond what I just said.

Mr. Davis: May I have marked for identification [5627] copies of a letter dated June 26, 1961, addressed to Mr. Holliday, from Mr. Tillinghast.

(Copies of a letter dated June 26, 1961, to Mr. Holliday from Mr. Tillinghast, marked Defendants' Exhibit 80 for identification, as of this date.)

Q. Can you identify Defendants' Exhibit 80 as being in fact a letter which you sent on June 26th to Mr. Holliday?

A. It appears to be.

Q. And copies were sent to each of the directors?

A. I believe so.

Mr. Davis: Again, Mr. Special Master, I note we have only been furnished a copy of this letter. Pre-

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sumably copies of this letter should be in TWA's files or the files of Mr. Cocke, Mr. Leslie, Mr. Hall.

Mr. Zeller: We will investigate and advise you, Mr. Davis.

Mr. Davis: In that connection, Mr. Rankin, I would like to inquire whether or not the files of counsel for TWA, particularly of the Chadbourne firm, have also been examined for the possible existence of documents in their files which normally would be in the files of TWA.

【5628】 The Special Master: I think you should make some statement about that, Mr. Zeller, or Mr. Sonnett when he returns, so as to clarify whether a search has been made in those files, not as to any confidential documents, I assume.

Mr. Davis is not asking that. But all documents that would otherwise be responsive to the subpoena, if they were not in the files of the attorneys.

Mr. Zeller: Very well, sir. I will be glad to.

by Mr. Davis:

Q. Mr. Tillinghast, I notice that a blind copy of this letter was sent to Mr. Reed and Mr. Olds. Was there a particular reason for sending them copies of this letter?

Mr. Zeller: You mean blind copies.

Mr. Davis: Copies of the letter.

A. Because I thought they would be interested in the subject matter.

Q. Did anyone participate with you in the drafting or preparation of this letter?

*Tillinghast—Deposition*

A. It's very possible that Mr. Rowe looked this over, although at the moment I have no distinct recollection of it.

Q. Did you discuss the contents or the substance of the reply with Mr. Breech?

【5629】 A. I rather doubt it.

Q. With Mr. Reed?

A. Possibly. I just don't recall for some reason the preparation of this letter, Mr. Davis, and I am not sure whether I did this all myself, or whether I prepared a draft and submitted it to Mr. Rowe and/or Mr. Reed, and obtained their comments.

Mr. Davis: Mr. Rankin, may I request at this time that a search be made for the existence of any drafts which may have been sent to Mr. Rowe or Mr. Reed?

The Special Master: You may.

Mr. Zeller: Again, I don't know the answer to that, but I will advise you, Mr. Davis.

By Mr. Davis:

Q. I call your attention to page 2, the third full paragraph, and the sentence reads "We find ourselves faced by widespread refusal by the present holders of our senior debt, either to consent to a termination of the voting trust or to lend additional monies except on the condition that the voting trust continue."

My question is, what were you referring to, or were you referring to merely what you have described in your prior testimony?

【5630】 A. I am referring to what I have already testified to several times.

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Q. By that time, June 26th, you had not made any contact or communicated with the lending institutions other than the extent to which you have already described it?

A. I believe that is the case.

Q. So far as you know, no one on behalf of TWA had communicated or contacted lending institutions except to the extent you have already described it?

A. That's correct.

Q. By that time you had not had any discussion with Mr. Breech or Mr. Reed relating to any meetings that Mr. Breech or Mr. Reed may have had with either counsel for or the lending institutions themselves?

A. Not except as I have already testified.

Q. Now let me refer you to page 3 of Defendants' Exhibit 80, and particularly the last sentence of that paragraph which reads, "Obviously the resolutions which you suggest for adoption cannot be dealt with until that time, except that as you will be happy to hear the steps suggested at the bottom of page 5 and the top of page 6 already have been taken."

Your reference to the bottom of page 5 and the top of page 6 refers to the bottom of page 5 and top of page 6 [5631] of Defendants' Exhibit 11-Q, does it not? This is your reply to Mr. Holliday's letter of June 21st?

A. Yes.

Q. Looking at the bottom of page 5 and the top of page 6 of Defendants' Exhibit 11-Q, you will note that Mr. Holliday was—will you identify the steps suggested to which you were referring in that paragraph of your letter, which you say had already been taken.

A. A step of contacting the financial institutions to make inquiry as to whether in the event of termination of the voting trust and the subscription to additional equity in the

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sum of \$100 million, they would be prepared to continue present loans and to make future loans to TWA.

Q. If you look at Defendants' Exhibit 11-Q, at the bottom of page 5, you will see that Mr. Holliday was referring first to resolutions to be adopted by the board of directors. You weren't referring to that as a step which had already been taken, were you?

A. I think not.

Q. Then at the very bottom of the page "The president and chairman of the board of the company be directed to communicate with appropriate representatives of the lending institutions," et cetera.

The president was you and the chairman of the [5632] board was Mr. Breech?

A. That's correct.

Q. Had you or Mr. Breech communicated with appropriate representatives of the lending institutions by June 26th?

A. Not directly, Mr. Davis. Through Mr. Leslie we had.

Q. You mean that your letter of June 26th, when it stated that the step suggested by Mr. Holliday had already taken place, you were referring only to what you have already described in your testimony?

A. Yes, Mr. Davis.

Q. Was it your understanding that Mr. Leslie had communicated with these lending institutions on behalf of Mr. Breech and on your behalf?

A. On behalf of TWA, Mr. Davis. I don't think I considered it particularly important that the president and the chairman of the board do it. To my mind the substance of what Mr. Holliday was suggesting was that we obtain, or that we communicate with the lending institutions for the purpose of obtaining certain information.

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Q. You will recall, Mr. Tillinghast, that I called to your attention some notes of Mr. Wadsworth, I believe, of Dillon, Read, indicating that Mr. Breech and his lawyers had met with Mr. Hagerty and his lawyers?

【5633】 A. Yes, I remember that.

Q. I want you to try to refresh your recollection as to whether or not this letter was not drafted by Mr. Reed for you?

A. Which letter?

Q. Your letter of June 26th, which has been marked Defendants' Exhibit 80?

A. I am quite sure it wasn't, Mr. Davis. This reads very much like my own composition, and I am quite confident that I drafted that myself.

Q. Therefore by the sentence which I read to you from Defendants' Exhibit 80, you were referring to the contacts made with the lending institutions that you have already identified and described, is that correct?

A. That's correct.

Q. Turning again to Defendants' Exhibit 11-Q, page 6, the suggestion at the top of page 6 was "The president and chairman of the board be requested to submit a report in writing to the directors of the company with respect to the efforts made with such lending institutions. The result of such efforts, and the position or attitude taken by such lending institutions, together with their recommendation with respect to Proposal No. 1, and the basis for such recommendation."

【5634】 Q. Was that done?

A. I have already testified, Mr. Davis, with respect to that, and I don't think I can add to what I have already said.

Q. Are you referring to what took place at the directors meeting of June 21st?

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A. I am.

Q. Do you know of any report in writing by either the president or the chairman of the board?

A. No, there wasn't a report in writing by the president or the chairman of the board. However, we did, as I have already testified, present to the board and describe to the board and in part read to the board the communications to and from the lending institutions. To my mind we had complied with at least the substance of what Mr. Holliday was talking about.

Q. In any event, that is what you had reference to by your sentence in your letter?

A. That's correct.

Q. Now we look at the last paragraph on page 3, which refers to Mr. Rowe being in communication with Mr. Davis, et cetera.

Mr. Zeller: Page 3 of Defendants' Exhibit 80:

Mr. Davis: Yes.

【5635】 Q. Can you identify more than you already have your understanding of any communication between Mr. Rowe and Mr. Davis with respect to any extension of time?

A. No, I don't think I can add to what I have already testified to.

Q. Did you get any report from Mr. Rowe indicating that TWA could have or could not have an extension of time to consider Proposal No. 1?

A. I believe there was one communication. I can't remember the precise identification of it for the moment. I am wrong. What I am thinking of is an extension to the 22nd of June, rather than an extension—I do not recall that you did anything in the way of extending the time, Mr. Davis.

*Tillinghast—Deposition*

Q. Did Mr. Rowe report to you that he had requested an extension of time which had been rejected?

A. No. My letter of the 16th and this letter of the 26th, I think, made it quite clear that we would be happy to receive any extension of time that you were prepared to make available to us, and my recollection is that none other than the extension to the 22nd was made available.

Q. Am I correct in understanding your testimony to be that your letter of June 16th and this letter of June 26th reflect whatever effort TWA made to obtain an extension [5636] of time?

A. That's correct.

Q. Let me hand you what has been marked as Defendants' Exhibit 11-F, being a letter dated May 26, 1961, from Mr. Davis to the lending institutions, the board of directors and the voting trustees. Will you describe what you did or what took place upon your receipt of this letter?

A. Mr. Davis, I don't remember what I did with this at the time it was received.

Mr. Davis: From the production, it indicates it comes from the president's office. May I request that copies of this letter sent to other directors of TWA, or officers or employees of TWA, be produced if they have not been destroyed?

The Special Master: You may.

Mr. Zeller: Off the record.

(Discussion off the record.)

Mr. Zeller: I will investigate that and advise you,  
Mr. Davis.

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By Mr. Davis:

Q. Upon receipt of this letter of May 26th, Defendants' Exhibit 11-F, did you discuss it with anyone?

A. Yes, I think I discussed it with Mr. Reed and Mr. Rowe, I believe.

■5637] Q. Anyone else?

A. I think I also discussed it with Mr. Leslie and Mr. Cocke.

Q. Not Mr. Breech?

A. It may have been that I discussed it with Mr. Breech by telephone, although I don't specifically recall it.

Q. You don't recall if you had any discussion over the telephone that was a serious discussion of the letter, or did you have a serious discussion over the telephone with Mr. Breech.

A. I don't recall, Mr. Davis. I think it is very likely that I did discuss it with him, but I have no specific recollection of the discussion.

Q. How about Mr. Sessel?

A. Not that I recall, although again it is possible that I discussed it with him.

Q. You notice that the letter was also addressed to the Irving Trust as agent?

A. I see that.

Q. That does not refresh your recollection as to whether you discussed it, or did you discuss it with someone else representing the Irving Trust, other than Mr. Sessel?

A. No. If I discussed it with anyone, it was with Mr. ■5638] Sessel, I am quite sure.

Q. Your recollection is that you didn't discuss it with anyone at the Irving?

A. It's not my recollection that I did not discuss it with anyone at the Irving. I have no recollection of having discussed it.

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Q. It is also addressed to the Equitable. Did you discuss it with anyone representing or associated with the Equitable?

A. Not that I recall.

Q. I notice the letter is also addressed to the Metropolitan. Did you discuss it with anyone associated with or connected with the Metropolitan?

A. I do not believe so.

Q. Did you discuss it with Mr. Olds? It is addressed to the voting trustees.

A. I do not believe I discussed it with Mr. Olds.

Q. Give me your best recollection as to your discussions which you had with Mr. Reed?

A. I remember, Mr. Davis, one small thing relative to my discussion with Mr. Reed, which comes to mind, and that is I happen to remember remarking to him appreciating the generous statements you made about me at the bottom of page 8.

【5639】 I believe I discussed with Mr. Reed, as well as Mr. Rowe, the question of whether this required a reply, or what should be done about it.

I remember expressing the view with which both of them concurred, that this was another Davis blast, and didn't really contain anything new.

I remember discussing with them the desirability of having any general town meeting of all these different people to discuss this matter, and concluding that no worthwhile purpose would be served by such a meeting.

I recall having expressed the view that this seemed to be aimed mainly at our Boeing deal, and that that was a management matter which ought to be dealt with by the management as such, and that we would be happy to discuss this with any representatives the Tool Company wanted to discuss it, but I doubted the wisdom of discussing what

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was largely a technical problem in some sort of a large meeting with diverse interests.

That is about as much as I can remember at the present time, Mr. Davis.

【5640】 Q. You referred to Mr. Reed and Mr. Rowe together. Was this a meeting or conference with Mr. Reed and Mr. Rowe?

A. Not that I recall, Mr. Davis. My best recollection is that it was two separate telephone conversations.

Q. In other words, you had a telephone conversation with Mr. Reed and you had a telephone conversation with Mr. Rowe?

A. That is my best recollection, although I wouldn't want to be positive of that, because I had a variety of discussions with them during this period of time relative to this controversy, and most of the time I had separate telephone conversations with them, but I know there were at least a number of times when we met in my office and discussed some of these things.

Q. In essence, but independently both Mr. Reed and Mr. Rowe reached the same conclusion that you have described?

A. That is my recollection.

Q. In those independent telephone conversations, both Mr. Reed and Mr. Rowe agreed with you that the letter did not require a reply, is that correct?

A. I believe so, Mr. Davis, although I must say that is a little hazy in my mind, but I think that's right.

【5641】 Q. Is it fair to say that you did not pay much attention to the letter?

A. No, I don't think it would be fair to say that, although I did have the distinct feeling there wasn't anything new in the letter, and that this was just more of the same.

Q. By "more of the same," you are referring to the May 19th letter?

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A. I am referring to the whole campaign that had been going on since your first letter.

Q. Wasn't the May 19th letter the first letter?

A. Perhaps. I don't recall offhand, but if that was the first letter, that's correct.

Q. Do you recall whether it was in your conversation with Mr. Rowe or Mr. Reed that you discussed the desirability or lack of desirability of having a meeting with these diverse interests?

A. My recollection is that I discussed it with both of them.

Q. But I recall your prior testimony to be that the conclusion was reached that no useful purpose would be served in having a town hall meeting?

A. A town meeting.

Q. A town meeting?

[5642] A. That's correct.

Q. I am asking you if you recall whether that was something discussed in your telephone conversation with Mr. Reed or Mr. Rowe?

A. I believe I discussed it with both.

Q. You previously indicated that you also discussed or may have discussed it with Mr. Leslie and Mr. Cocke.

Will you describe what took place in connection with any discussion you may have had with those gentlemen?

A. Well, I have a recollection of Mr. Cocke having come into my office with his copy of this, having made some semi-facetious remark about Davis being quite a letter writer, or something to that general effect, and my having said something to the general effect, "I guess we will have to get used to reading all this material."

So far as Mr. Cocke is concerned, I don't remember much beyond that.

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Q. You did not discuss with him the desirability of meetings with these diverse interests?

A. I don't recall any such discussion.

Q. What was the nature or substance of any discussion with Mr. Leslie?

A. I really don't remember offhand, Mr. Davis, just what is the substance of the discussion was with Mr. Leslie, al- [5643] though I am quite sure I talked with him about the letter, but just what was said I can't recall at this moment.

Q. Do you recall anything being said by any of these gentlemen with whom you discussed this letter as to the effect that it might have on TWA or its management or its operations?

A. I would hesitate to say, Mr. Davis, because it just isn't clear enough in my mind. I have the feeling that a remark was made by someone about this being part of the war of nerves, but I can't tell you with certainty who it was.

Q. Do you have any recollection of discussing it with any of the other directors of TWA—with Mr. Slack?

A. No, I don't believe I discussed it with Mr. Slack, because so far as I recall, he wasn't around at that time. The more I think about it, the more I think I discussed it with Mr. Sessel, and my recollecton is that Mr. Sessel called me up after he had gotten it, and asked me if I had received a copy of it, and what did I think of it.

Q. And then what happened?

A. I believe I told him that I thought it was just part of your campaign to block the Boeing purchase, and beyond that I don't recall what the conversation was.

Q. Let me direct your attention to the paragraph which [5644] begins at the bottom of the first page of the letter, which reads:

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"It is the desire of Toolco to confer with you or your representative as soon as possible with the objective of working out an amicable solution wherever there may be a difference of opinion."

Do you recall discussing with anyone the desirability of arranging for such a conference?

A. I believe I discussed that with Mr. Reed and probably with Mr. Rowe, although I don't recall the conversation with Mr. Rowe particularly relating to this.

I believe Mr. Reed took the position that we should be prepared to sit down and discuss the matter if representatives of the Tool Company wished to do so, and I believe I told him that we would be happy to do so at any time if there was any real desire on the other part to sit down with us.

Indeed, as I recall it, it was later that week that we did sit down with you in connection with the 990 question.

Q. Are you referring to the June 2nd presentation relating to the 990s?

A. That's correct, yes. I believe that it was in connection with that discussion that we discussed the desirability of having sort of a town meeting discussion, and con-[5645] cluded that with as many people and as many diverse interests involved, in all probability it would lead to no fruitful result.

Q. Did you decide to reply to that letter of May 26th?

A. No, I don't think I did. As I recall it, and as I look at my calendar here, this is the day—the day I received this was the day on which I was very busy trying to arrange to replace the Prudential part of our proposed financing program.

The next day was Memorial Day. Unless I am mistaken, by Wednesday or Thursday we already had some more

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communications from you. We were receiving communications, as I recall it, faster than we were answering them, and then it was either Wednesday or Thursday that arrangements were made for a meeting on Friday.

If my recollection is correct, this letter was never really answered, and we just seemed to bounce from one communication and one discussion to another.

Q. When you refer to communications, insofar as written communications are concerned, are you referring to anything other than what you have already identified?

A. No.

Q. And in your reference to oral communications, are you referring only to those which related to the arrangement for the presentation to be made relating to the 990s, which took place on June 2nd?

A. No.

The Witness: Read that question back.

(The question was read)

A. As I testified several times before, Mr. Davis, I think Mr. Reed and Mr. Rowe were talking with you rather frequently, perhaps daily, during this period. I am referring to all of those communications.

Q. You are unable to identify those communications any more than you have already done?

A. That's correct, yes.

Q. Do you know if any of the other addressees of this letter communicated with the Tool Company or any of its representatives with respect to any of its contents, or this objective stated in the paragraph beginning at the bottom of page 1?

A. I think the voting trustees communicated with you, at least orally, through Mr. Reed. I don't recall if I knew

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the extent to which the financial institutions communicated with you.

Q. You never heard that they did or did not?

A. I have no present recollection of knowing whether they did or did not.

【5647】 Q. And your reference to Mr. Reed having communicated on behalf of the voting trustees, can you refer to anything more specific than you have already identified?

A. No, I can't, Mr. Davis.

Q. Referring to page 5 of that communication, you will see among the specific areas identified on behalf of Toolco, are the following:

First, the arrangement with Boeing for the acquisition of additional Boeing aircraft.

With respect to that, were there any discussions involving that subject matter with the Tool Company, other than the June 2nd presentation relating to the desirability of 990s?

A. I know again, Mr. Davis, that Mr. Reed had a number of conversations with you, at least he so stated to me, to the general effect that the TWA people believed that the proposed Boeing program was in the best interests of TWA, and proposed to proceed with it.

Q. But again, you cannot identify these alleged conversations by Mr. Reed other than the extent to which you have?

A. That's correct.

Q. You see the paragraph beginning on page 6, of the financing program contemplated between TWA and the lending 【5648】 institutions constitute self-dealing, and Toolco objects to any such arrangement without its consent.

*Tillinghast—Deposition*

Do you know of any meeting, conference or communication relating to that subject, with the Tool Company or any of its representatives?

A. Again I know that is a subject Mr. Reed was discussing with you at the time.

Q. You are not any more familiar with the nature of any such discussion than you have already identified?

A. I cannot testify in more detail than I have already.

Q. Is it your understanding that Mr. Reed had discussed with a representative of the Tool Company this subject of self-dealing?

A. I believe, Mr. Davis, that he had discussed with you the views that you were putting forth that this constituted self-dealing. I believe that he was taking the position that it was not that.

Q. I refer you to page 7, the paragraph beginning at the bottom of the page, which reads:

"Toolco hereby requests that you immediately advise the undersigned as to the status of the program described in the current prospectus relating to the purchase of Boeing equipment . . ." et cetera, and "the current negotiations with the lending institutions," [5649] et cetera.

Did, so far as you know, TWA advise the Tool Company or any of its representatives as requested by the portion I just read to you?

A. I believe that the Tool Company was advised, or had been kept advised up to this point as to the general status of the program, and that during the course of the week of May 29th was advised that TWA was continuing with the program.

Q. I am at the moment referring particularly to the furnishing of information as requested by that paragraph.

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Mr. Zeller: What is the question?

The Special Master: I do not think there is a question.

Mr. Zeller: I don't think there is.

Mr. Davis: I asked him if he knows to what extent, if any, TWA furnished any of the information requested by that paragraph.

He answered by saying that he understood that during the week of May 29th the Tool Company was advised that TWA was proceeding.

My question is whether you have any information, or is it your understanding that the information requested was furnished?

【5650】 A. As I understand the letter you request information as to the status of the program, and I believe you were advised that the status of the program was that it was proceeding in the normal course.

Q. Was any detailed information as to the program itself furnished to the Tool Company?

A. May I finish my answer?

Q. I thought you were finished.

A. I believe, I would have to refresh my recollection, that Mr. Rowe somewhere along the line here, sometime during this week, wrote you to that effect, although perhaps I am wrong.

As to the current negotiations with the lending institutions, I believe that you were merely advised that they were proceeding.

So far as reviewing the papers, I believe that we took the position that in view of the antagonistic position being taken by the Tool Company, that we did not think it appropriate to advise them of the details of the negotiations.

*Tillinghast—Deposition*

Mr. Zeller: May we have five minutes?

The Special Master: Let us take a five-minute recess.

(Whereupon, a short recess was taken)

【5651】 By Mr. Davis:

Q. In your prior answer, Mr. Tillinghast, you said that it was your understanding that the Tool Company had been kept advised of the general status of the program. What was the basis for your statement that it was your understanding that the Tool Company had been kept advised of the general status of that program?

A. Mr. Holliday got copies of all the directors' minutes, and indeed at the early stages he was at one of the directors meetings at which this program was discussed. It is my recollection, more particularly at the time we are talking about, at the end of May, the first part of June, that you were advised by Mr. Reed and/or Mr. Rowe, and were aware that we were moving ahead as planned with the program.

Q. So far as Mr. Holliday was concerned, and apart from any discussion between counsel, you are referring to what is disclosed by the minutes of the meeting of the board of directors?

A. Yes. I think the memorandum relative to financing that had been distributed to the directors, which you have already identified.

Mr. Davis: May I have marked for identification a letter from Mr. Rowe to Mr. Davis, dated June 8, 1961.

【5652】 (Letter from Mr. Rowe to Mr. Davis, dated June 8, 1961, marked Defendants' Exhibit 81 for identification, as of this date.)

*Tillinghast—Deposition*

Q. Do you have what has been marked as Defendants' Exhibit 81 before you, Mr. Tillinghast?

A. Yes, I do.

Q. Can you identify that as a letter by Mr. Rowe on behalf of TWA?

A. Yes.

Q. Do you recall any discussion with Mr. Rowe as to what was to be said in this letter?

A. I recall, Mr. Davis, discussing the last paragraph with Mr. Rowe.

Q. Are you referring to the paragraph which states in part "I believe it would be inappropriate for me to furnish at this time with all the 'detailed terms of the financing currently being negotiated by TWA with certain lending institutions'"?

A. That's correct.

Q. And you adverted to that as the position of TWA in your prior testimony?

A. That's correct.

Q. Did you discuss it with anyone other than Mr. Rowe, by that I mean anyone else related to or associated with TWA?

A. Not that I recall.

【5653】 Q. The portion of it which read "In view of the recent statement and attitude of Hughes Tool Company," that refers to the letters and communications that you previously had identified?

A. To the campaign which in my mind you were carrying on as evidenced in part by the letters and telegrams.

Q. When you say "evidence in part," you do not have in mind any other communication between the Tool Company or any of its representatives with TWA or any of its representatives, as part of that campaign which you have not already identified?

*Tillinghast—Deposition*

A. That's correct.

Q. Let me refer you to Defendants' Exhibit 39 for identification, which is a letter dated May 29th, to Mr. Holliday from you, with a copy to Mr. Davis. This was a letter from you to Mr. Holliday referring to Defendants' Exhibit 11F?

A. That's correct.

Q. And that is a May 29th letter which is referred to by Mr. Rowe in his letter, which has been marked as Defendants' Exhibit 81?

A. Yes.

Mr. Zeller: Let me hand this document to the Special Master because I think this illustrates [5654] a problem that has been occurring to me as we have gone through this.

As your Honor will see, that letter refers—that is a letter to Mr. Holliday as a representative of Tool Company, expressing Mr. Tillinghast's willingness to sit down with a representative of the Tool Company, obviously occasioned by Mr. Davis' letter of May 26th, which he was questioning Mr. Tillinghast about just before the recess.

The witness obviously didn't have that in mind. I don't see how he could keep in mind all of these documents.

Mr. Davis: It is not necessary. His answers have always been other than as previously identified. This was already identified in the record.

Mr. Zeller: As long as the record clearly so shows, because my point is a limited one. It is simply that as we get these more or less omnibus questions, and I am not suggesting there is a better way to do it, I just don't know how we can avoid getting a record

*Tillinghast—Deposition*

which is necessarily misleading if you look at just the four corners of the record.

Mr. Davis: I appreciate that. The problem is this. We have marked something for identification [5655] before. We have an understanding that to save time I was requested before that we never have to repeat anything previously identified or marked. I am not calling to his attention something previously identified and marked. My point is that I am trying to discover whether there is anything else which exists in the witness' mind other than what he has already testified to, which relates to this contention that these letters were part of an effort to interfere with the affairs of TWA.

Mr. Zeller: As long as we are clearly agreed on that. There won't be any quotations in the brief from the record on the failure to identify a particular document at a particular point in the deposition, that that indicates there wasn't anything else.

Mr. Davis: You can brief how you want to from the record. My only point is that I took the time and trouble to be sure that we have not overlooked anything in fairness to the witness for that very reason. But I am entitled to know from the chief executive officer of TWA what it is that he claims constitutes this conduct with which we are charged. I have tried to be fair about identifying all the [5656] documents which have been called to our attention and furnished to us. I won't guarantee that I won't overlook any.

You will have an opportunity, if you care to do so, at this time or later on to produce whatever you want to produce.

The Special Master: Are you making an objection, Mr. Zeller?

*Tillinghast—Deposition*

Mr. Zeller: No, sir, I am not. I wanted to call this to your attention and counsel's attention as a problem that we are faced with because of the magnitude of the documents primarily.

Mr. Davis: That is one of the reasons why it takes so much time. Your partners think I ought to do it in two days.

Mr. Zeller: I agree with him.

By Mr. Davis:

Q. The second area specifically mentioned on behalf of Toolco in Exhibit 11F appears on page 8, which refers to "Independently of the outcome of the Boeing purchase, another matter which requires discussion is the seventeen Convair jet aircraft."

By the seventeen Convair jet aircraft, you understood it to refer to the thirteen 990s and the four 880s?

15657] A. That's right.

Q. And it was that matter which was the subject of a presentation on June 2nd? We have identified the minutes of that conference on June 2nd.

A. Without conceding the accuracy of your characterization, yes.

Q. The next item specifically referred to is the question of your employment contract. It is referred to in paragraph 3?

A. That's correct.

Q. You previously said that you recalled that there was some discussion of that with Mr. Reed?

A. No, I don't think I did so testify.

Q. Or Mr. Reed made a passing reference to it?

*Tillinghast—Deposition*

A. I think I made a passing reference to it. I might say when I say "it," not to the employment contract, but to the kind words of the first sentence of paragraph 3.

Q. Was paragraph 3, as you view it, any part of the alleged interference by the Tool Company with the affairs of TWA?

A. I just think this whole thing was part of a war of nerves, a campaign to put pressure on TWA to get TWA to forego the Boeing program.

Q. In other words, when you identified this letter [5658] which has been marked Exhibit 11F, as part of the interference into the affairs of TWA, you do not have in mind any particular part of the letter, it is the letter in its entirety, is that correct?

A. Yes, I think the letter in its entirety was a calculated pressure move to bring about the interruption of the Boeing program.

\* \* \* \*

Defendant's Exhibit 11-A.

[19142]

SIMPSON THACHER & BARTLETT  
120 BROADWAY  
NEW YORK 5, N. Y.

Commerce Building  
1700 K Street, N.W.  
Washington 6, D.C.

The Board of Directors  
Trans World Airlines, Inc.  
New York, N.Y.

May 16, 1961

Dear Sirs:

We have been retained to advise Hughes Tool Company in connection with matters pertaining to its beneficial ownership of approximately 78% of the outstanding common stock of Trans World Airlines, Inc. (TWA), and in connection with its acquisition and possible distribution of debentures to be acquired by it from TWA, pursuant to the offering described in a registration statement filed with the Securities and Exchange Commission (File No. 2-17847).

Based on a limited investigation to date, we are concerned that said registration statement may be deficient in certain material respects, and that our client may be subjected to liabilities under the Securities Act of 1933, even though it has not participated in the preparation of said registration statement and has not been consulted with respect to its contents.

In the circumstances, we must request an opportunity to present to the persons constituting the Board of Directors of TWA various matters which require consideration [19143] before the contemplated registration statement becomes effective. Some of these matters are based upon

*Defendant's Exhibit 11-A.*

the position of our client with respect to action taken by the management of TWA since the establishment of a Voting Trust at the insistence of certain lending institutions presently controlling the Voting Trustees, and with respect to the fiduciary duties and obligations which said lending institutions, the Voting Trustees and the Board of Directors elected by the Voting Trustees, owe to our client as the beneficial owner of more than 78% of the presently outstanding common stock of TWA.

We have been requested by our client to make every effort to resolve in an amicable manner any difference of opinion which may exist, and we would welcome an opportunity to discuss these matters with such persons as you may designate. Please communicate with Mr. Chester C. Davis in connection with this matter.

Very truly yours,

SIMPSON THACHER & BARTLETT

Defendant's Exhibit 11-B.

【19144】

May 19, 1961

Re Registration Statement of Trans  
World Airlines, Inc.  
(Registration No. 2-17847)

Trans World Airlines, Inc.  
380 Madison Avenue  
New York, N. Y.

Attention: Mr. Charles C. Tillinghast, Jr., President

Securities and Exchange Commission  
Washington 25, D. C.

Attention: Mr. Ralph C. Hocker

Gentlemen:

At the hearing held before the Securities and Exchange Commission on Thursday, May 18th, relating to the request of Trans World Airlines, Inc. (TWA) that the effective date of the above Registration Statement (Registration Statement) be accelerated so as to become effective on May 18, 1961 and the objection made by Hughes Tool Company (Toolco) to the entry of an order granting such request, this firm was directed by the Commission to confirm to TWA and to the Commission in writing today certain undertakings made by this firm at such hearing on behalf of Toolco, and was further directed to provide TWA with a detailed statement as to the respects in which 【19145】 the Registration Statement may be deficient. This letter is being delivered in response to and, to the best of our ability and knowledge at the present time, in compliance with such direction.

*Defendant's Exhibit 11-B.*

Mr. Chester C. Davis, a member of this firm, was retained on Monday, May 15, 1961 to advise Toolco in connection with matters pertaining to its beneficial ownership of 78% of the outstanding Common Stock of TWA and in connection with its acquisition and possible distribution of that portion of the 6-1/2% Subordinated Income Debentures (Debentures) with Common Stock Purchase Warrants (Warrants) attached to be offered by TWA to its stockholders as set forth in the Registration Statement which Toolco is obligated or entitled to acquire pursuant to existing agreements with TWA. Up to the present time Mr. Davis is the only person associated with this firm authorized by Toolco to commit Toolco with respect to any of the matters hereinafter set forth. This firm had not been previously retained by Toolco for any purpose. On Monday, May 15, 1961, this office undertook an examination of the extensive documentary material relating to the rights and relationships between Toolco and TWA and the information contained in the Registration Statement filed by TWA with the Commission. At that time the only Registration Statement available for examination by this firm and to other representatives of Toolco available in New York City were the Registration Statement originally filed with the Commission on or about [19146] March 30, 1961, Amendment No. 1 filed May 11, 1961 and Amendment No. 2 filed May 12, 1961. On the following day we requested and received from counsel for TWA copies of exhibits to the Registration Statement.

On this same day, Mr. Davis met with Mr. Forrester, an officer of Merrill Lynch, Pierce, Fenner & Smith, Incorporated (Merrill Lynch) and two members of the firm of Shearman & Sterling, who were acting as counsel for Merrill Lynch, to consider a proposal contemplating the formation of an underwriting syndicate by Merrill Lynch to purchase from Toolco and distribute to the public Deben-

*Defendant's Exhibit 11-B.*

tures and Warrants to be acquired by Toolco from TWA pursuant to the agreements referred to above.

We are informed and believe that Toolco on Wednesday, May 10, 1961 for the first time decided to make a public distribution of the securities being offered by TWA to its common stockholders, and immediately thereafter negotiations were undertaken on behalf of Toolco with Merrill Lynch. At that time Merrill Lynch advised Toolco that it was prepared to undertake to form an underwriting syndicate for such a public distribution, provided that TWA would delay the effective date of its Registration Statement for one week, and with certain commitments by Toolco in satisfactory form. We are further informed and believe that Merrill Lynch discussed its proposal with Mr. Tillinghast, President of TWA, [19147] on Friday, May 12, 1961, with a request for the necessary postponement, after having discussed this matter with counsel for TWA, counsel for the Voting Trustees and Mr. Leslie, Financial Vice President of TWA, on the preceding day, Thursday, May 11, 1961. At that time Merrill Lynch was proposing to form an underwriting syndicate for a firm underwriting which would insure the receipt by TWA of more than \$11,000,000 of new money at no cost to TWA, such cost to be borne entirely by Toolco.

On Monday, May 15, 1961, we were advised by Merrill Lynch that action on its proposal, including a possible postponement of the effective date of the Registration Statement, would be considered at a meeting of the Board of Directors of TWA to be held on Wednesday, May 17, 1961, and that any action on our part or any communication on our part to TWA or its counsel relating to possible deficiencies as to the Registration Statement then on file with the Commission would jeopardize favorable consideration by the Board of TWA. Mr. Forrester stated to representatives of Toolco, including Mr. Howard Hughes, the sole

*Defendant's Exhibit 11-B.*

owner of Toolco, that in its judgment, based in part on conversations with TWA or its representatives, this firm should not take a position or communicate with TWA or its counsel with respect to the adequacy of the Registration Statement until the Board of Directors of TWA, at a meeting to be held on Wednesday, May 17, had had an [19148] opportunity to consider and act upon the proposal and request of Merrill Lynch. At the same time Mr. Davis was requested by Merrill Lynch and its counsel to take appropriate steps to obtain the necessary corporate authority of Toolco so as to enable Mr. Holliday, a Vice President of Toolco, to enter into an appropriate firm commitment between Toolco and Merrill Lynch with respect to the public distribution desired by Toolco. The requirements of Merrill Lynch in this regard occupied Mr. Davis and others associated with this firm until approximately 1 A.M. Tuesday, May 16, 1961. In the meantime, another member of this firm and several other associates began to review the Registration Statement then available to this firm. There are attached as Exhibits A and B hereto certified copies of the excerpts of the minutes of the Board of Directors of Toolco adopted on Monday, May 15, 1961, and letter dated May 16, 1961 executed by Mr. Holliday and delivered to Merrill Lynch the evening of May 16, 1961.

We are informed and believe that copies of Exhibits A and B were delivered to TWA or its president advised of their existence on or before the meeting of the Board of Directors of TWA on May 17th. In the evening of Monday, May 15th, Merrill Lynch advised Toolco and Mr. Davis that it had made arrangements to meet with responsible representatives of TWA in the morning of Tuesday, May 16th, for the purpose of discussing further the merits of their proposal, its advantages [19149] to TWA, and their opinion that there could be no disadvantage to TWA in consenting to the requested postponement of the effective

*Defendant's Exhibit 11-B.*

date of the contemplated Registration Statement and offering. In order to eliminate a problem presented by Merrill Lynch to Toolco which had been discussed by Merrill Lynch with TWA or its counsel or counsel for the Voting Trustees, with respect to an assurance that the interest coupons on the proposed Debentures would be paid on June 1, 1962, Mr. Davis with other representatives of Toolco undertook to commit Toolco to provide the necessary funds in cash, in trust, to be available to Merrill Lynch, to assure such payment. The corporate action taken by Toolco in that regard is reflected by Exhibits A and B.

On Tuesday noon of May 16, 1961, Mr. Forrester of Merrill Lynch informed Mr. Davis that instead of meeting with representatives of TWA he desired a further meeting and conference with Mr. Davis and other representatives of Toolco to be held at 2 o'clock of that afternoon. Such a meeting, which lasted until after 4:30 of that afternoon, was held and attended by Mr. Davis. In that conference, Merrill Lynch expressed confidence that TWA would favorably consider the proposal submitted to it by Merrill Lynch. At the same time, Merrill Lynch and its counsel advised Toolco that any assertions by it with regard to deficiencies in the Registration Statement or in connection with possible [19150] claims arising out of the relationship between TWA and Toolco would seriously jeopardize the prospects for favorable consideration of the Merrill Lynch proposal by the Board of Directors of TWA. Merrill Lynch assured Mr. Davis and other representatives of Toolco that it was convinced that the Merrill Lynch proposal would receive full and fair consideration by the Board of Directors of TWA at the meeting to be held on Wednesday, May 17. Believing that TWA, having everything to gain and nothing to lose, would postpone the effective date of the Registration Statement and accept the Merrill Lynch proposal, Toolco instructed this firm to defer presentation of matters

*Defendant's Exhibit 11-B.*

of concern to us until after action by the Board of Directors of TWA, in the expectation that there would be adequate opportunity at such time to suggest revisions of the Registration Statement and permit consideration by TWA and Toolco of their respective positions upon various aspects of their prior relationship.

Some time after 6:00 P.M. of the evening of Tuesday, May 16, 1961, Mr. Forrester advised representatives of Toolco that a meeting had been had with Mr. Breech, Chairman of the Board, and Mr. Tillinghast, President of TWA, and that TWA had received a further presentation by Merrill Lynch. It now appears as a matter of record before the Commission that on Tuesday, May 16, 1961, there [19151] was filed Amendment No. 3 (hereinafter referred to as the Prospectus) to the Registration Statement, containing the statements appearing on page 4 thereof that a request for postponement of the contemplated offering had been received on May 11, 1961 and that TWA "has not agreed to such a postponement".

This firm on the morning of May 18, 1961 received a copy of the preliminary prospectus dated May 16, 1961. This Prospectus was the latest information available to this firm at the time of the hearing before the Commission on the evening of May 18th. This firm knew that there had been filed Amendment No. 4. A request to counsel for TWA was made for a copy of said Amendment No. 4 which was rejected or, at least, not complied with prior to said hearing. During the course of May 18th this firm was informed that on that day TWA had also filed Amendment No. 5. All statements and positions taken by or on behalf of Toolco at the hearing and in this letter were and are based upon what appears in the Prospectus.

Up until 7 P.M. on May 19th, Mr. Davis had been continuously occupied on urgent matters on behalf of Toolco, including efforts relative to arrangements for an under-

*Defendant's Exhibit 11-B.*

writing syndicate to participate in a public distribution of Toolco's share of the TWA offering and, being the only individual of this firm familiar with all the [19152] facts, was not able to commence consideration of the statements appearing in this letter and to correct drafts prepared by his partners and associates until that time. This firm has not had an adequate opportunity to inquire into or investigate the facts set forth in the Prospectus or any omission to state material facts therein.

Prior to the hearing, Toolco's representative stated to Mr. Reed of Hughes, Hubbard, Blair & Reed, representing the Voting Trustees, that Toolco was prepared to offer to TWA to reimburse it for any expenses incurred by TWA caused by the postponement requested by Merrill Lynch, such as the reprinting of Warrants or other documents containing a date which would have to be changed. At the hearing before the Commission Mr. Davis, with authority from Toolco and Mr. Hughes, restated such offer. The offer was not accepted by TWA and instead counsel for TWA vigorously resisted the efforts of Toolco for a reasonable delay. It is not clear to this firm whether the ruling or decision by the Commission in refusing to grant the request of TWA for acceleration of its Registration Statement was conditioned upon the payment by Toolco to TWA of such expenses or whether Toolco is obligated to continue its offer for a particular period of time. In order to avoid [19153] any misunderstanding, Toolco hereby renews until 10 A.M. E.D.S.T. Monday, May 22, 1961, its offer to pay such expenses. Toolco will in any event pay such expense if the payment thereof is a requirement of the Commission. This firm as counsel for Toolco does not, however, recognize that the imposition of such a condition by the Commission would be proper. In that connection, Toolco hereby notifies TWA that it questions the reasonableness of the estimated \$600,000 for expenses set forth in Part II of the Registration Statement.

*Defendant's Exhibit 11-B.*

This firm will use its best efforts to furnish TWA and the Commission all information available to it which it considers pertinent to the preparation of a corrective amendment to the Registratiton Statement. When a corrective amendment has been filed which in our opinion complies with the requirements of the Securities Act of 1933 and regulations promulgated thereunder by the Commision, we will advise our client Toolco to join in a request for acceleration, provided that by so doing Toolco's legal and equitable rights are not prejudiced. This firm reserves an unqualified right to advise its client to refuse to acquiesce in, or to object to, any [19154] Registration Statement filed by TWA which has not received the prior affirmative consent in writing of Toolco.

Mr. Davis, who is approving this letter, states that based upon every fact known to him to date, including conversations had with Mr. Howard Hughes and other representatives of Toolco, the position being taken by Toolco is not a device or an effort on the part of Toolco to interfere with the offering contemplated by TWA to its common stockholders. The positions being taken by Toolco in that regard are the direct result of advice given by Mr. Davis of this firm to Toolco since Monday, May 15th. Mr. Davis was authorized by Toolco to make each and every representation made by him at the aforesaid hearing. Each statement of fact made by Mr. Davis at the said hearing was true to the best of his knowledge and belief.

As previously indicated, Toolco is the owner of 78% of the outstanding common stock of TWA and this stock is currently in a voting trust. This firm is currently investigating the circumstances in which Toolco was required, coerced, compelled or induced to place this stock in such voting trust. We have tentatively reached the [19155] conclusion that this voting trust was required, in circumstances not yet fully determined, by certain lending insti-

*Defendant's Exhibit 11-B.*

tutions and that, notwithstanding the legal power to act vested in the voting trustees, such voting trustees are under a fiduciary obligation to the common stockholders, including Toolco as the beneficial owner of common stock, to carry out the purposes of said voting trust within its lawful scope. Based upon information available to us which is admittedly incomplete, it is a tentative conclusion of this firm that said voting trust, if lawful, was entered into for the limited purpose of securing or protecting the lending institutions. In that connection, it is our understanding of the provisions of the voting trust agreement and related documents that the lending institutions have the absolute right to remove two of the three voting trustees for any reason whatsoever, the third voting trustee being designated by Toolco.

Contractual commitments entered into between TWA and Toolco in the so-called 1960 financing obligate TWA to make the contemplated offering on or before May 31, 1961. Toolco obligated itself to subscribe to this offering, including any amount unsubscribed for by the public, up to \$100,000,000, and retained the right to subscribe to the remaining \$11,000,000 or thereabouts. It will be noted that [19156] the obligation of TWA to make this offering on or before May 31 is, as we understand it, pursuant to a contractual obligation between TWA and Toolco. It should be further noted that Toolco has the right and option to subscribe to this offering by tendering 6½% interim notes heretofore issued by TWA and presently owned by Toolco. It is the present belief of this firm that in the circumstances here present Toolco is not covered by the Commission's Rule 142. It is also the present belief of this firm that Toolco may be exposed to possible liabilities under the Securities Act of 1933 by reason of the provisions of Section 15 and Section 2(11) of said Act. It will be noted that TWA has not given and refuses to give Toolco any indem-

*Defendant's Exhibit 11-B.*

nification agreement against liability by reason of the statements or omissions in the Registration Statement.

Although legal representatives of TWA or of the voting trustees have indicated to Mr. Davis in a general way that TWA would cooperate with Toolco in the preparation of a registration statement in the future should Toolco delay its present plans to make a public distribution of the securities it is entitled to obtain under the contemplated offering by TWA to its common stockholders, it is our understanding that no contractual obligation exists in this regard. It was also indicated by such [19157] representatives that, in connection with the preparation by TWA of any such future registration statement for use in an offering of securities to be made by Toolco, an agreement of indemnity and indemnity bond would be required by TWA.

In order that TWA may commence promptly the necessary steps to correct what we believe to be material deficiencies in the Prospectus, we confirm the comments heretofore made to TWA and which were stated to the Commission on May 18. All interested parties must understand, however, that these comments do not purport to be complete. They represent all the comments which this firm is in a position to make within the time limitations imposed by the Commission based upon all the facts currently available to this firm.

Toolco, on advice of this firm, has not acquiesced to the request for acceleration of the effective date of the Registration Statement filed by TWA on May 17 or May 18. Counsel for TWA argued before the Commission that Toolco had deliberately delayed in presenting its objections to the Prospectus. Such an argument is, we believe, unwarranted. The preliminary Registration Statement filed by TWA on March 30, 1961 did not contain any reference to the purchase of Boeing aircraft or to a credit arrangement involving some \$147,000,000. At that time Toolco had no

*Defendant's Exhibit 11-B.*

intention to [19158] make a public distribution of any securities of TWA. Moreover, Toolco was without counsel experienced in matters of this kind until this firm was retained on Monday, May 15, 1961.

In the circumstances hereinabove described, we reserve the right to modify, correct or supplement any of the statements of fact hereinafter set forth relating to existing deficiencies. Each and every statement of fact herein appearing is, however, in accord with the knowledge and information available to Mr. Davis of this firm after as much inquiry and investigation as to those facts as time would permit.

1. At page 22, under the heading "Voting Trust", the identity of the lending institutions which appointed and have the unlimited power to remove Mr. Breech and Mr. Olds as voting trustees should be disclosed, since such lending institutions are in control of said voting trustees who constitute a majority of the voting trustees. Moreover, at page 14, under the heading "Introduction of Jet Aircraft", the lending institutions negotiating with TWA with respect to the financing of approximately \$147,000,000 should be identified. We understand that those lending institutions are identical with those controlling the voting trustees, with the exception of the addition of one insurance company which we believe to be [19159] The Prudential Insurance Company of America. It is our view that (a) the lending institutions controlling the voting trustees should be described as controlling persons or "parents" of TWA and (b) that current negotiations with respect to this financing of \$147,000,000, believed to be in the form of a private placement, constitute self-dealing. In that connection Toolco is informed and believes that said lending institutions propose to include as a condition in said financing a provision that in the event the voting trust is termi-

*Defendant's Exhibit 11-B.*

nated, even in accordance with its terms, the repayment of said \$147,000,000 will be accelerated and immediately become due and payable.

2. It is the position of Toolco that the Board of Directors of TWA are subservient to the majority voting trustees who are controlled by the lending institutions. It is the further contention of Toolco that the lending institutions are primarily interested in the repayment of an existing loan to TWA in the amount of approximately \$165,000,000. It is the further position of Toolco that the lending institutions, the majority voting trustees, and a controlling majority of the present Board of Directors of TWA are disregarding the best interest of the owners of the beneficial interest in the Common Stock of TWA. The position of Toolco with respect to the above is currently under investigation by this firm. It is the [19160] belief of this firm that those presently in control of TWA may have conflicting interests in relation to the management of the affairs of TWA or that from time to time such conflicting interests may develop. We believe that the Prospectus should disclose the understanding of the majority Voting Trustees with respect to the nature and extent of their duties to the lending institutions having the power to remove them from office, and to the beneficial owners of TWA; and that it should disclose the basis of that understanding, and all pertinent instructions by the lending institutions to the majority Voting Trustees or by the Voting Trustees to the members of the Board of Directors controlled by the majority Voting Trustees.

3. Under the heading "Voting Trust" at page 22 of the Prospectus, the statement relating to the circumstances in which the Voting Trust terminates is inadequate in that it does not describe the right of Toolco to repay the lending

*Defendant's Exhibit 11-B.*

institutions and thereby to cause a termination of the Voting Trust.

4. At page 23 of the Prospectus there appears an excerpt from a statement by the Civil Aeronautics Board. This firm is not fully familiar with the proceeding in which such statement was made, except that we understand that it was in connection with the arrangements commonly described as the 1960 financing, nor have we had an [19161] opportunity to study the adequacy of the disclosure reflected by the excerpt of the statement of the Board. Apparently the excerpt quoted in the Prospectus is designed to indicate that the Board, under the Federal Aviation Act of 1958, would have to take appropriate action under that Act in connection with any reassumption of control by Toolco over TWA by reason of its stock ownership. The quoted excerpt from an opinion of the Board is made without any statement as to the position of the present management of TWA or of its counsel as to their opinion, if any, with respect to the right of Toolco to reacquire the right to vote the shares of Common Stock it beneficially owns.

If it is the view of TWA or of the Commission that it is material to disclose to the public the possibility or probability that the Voting Trust may terminate and Toolco reacquire the right to vote the shares of stock it beneficially owns, then a more complete statement of the facts and circumstances with respect to the creation of the Voting Trust would be appropriate. It is the position of Toolco that it was compelled to enter into the Voting Trust under conditions which would warrant a termination of the Voting Trust otherwise than in accordance with the terms of the arrangements under which it was created. This position of Toolco is presently under in- [19162] vestigation by this firm. The information available to this firm in that regard is presently considered to be inadequate for the expression of an opinion. It is noted, however, that the lending insti-

*Defendant's Exhibit 11-B.*

tutions involved required that Toolco pay a penalty of 22% should Toolco choose to avail itself of the right to repay the full amount of the principal and interest due to the lenders. This circumstance leads us to believe that the contention of Toolco warrants careful consideration.

5. At page 14 of the Prospectus a statement appears which fairly implies, if it does not specifically state, that TWA during 1960 obtained from jet operations the same percentage of operating revenue as did its competitors. At page 20 of the Prospectus, however, a statement appears to the effect that, during 1960 and in the first quarter of 1961, TWA's share of domestic passenger traffic declined solely by reason of an alleged delay in the delivery to TWA of Convair 880 jet aircraft. It is the opinion of Toolco, which seems to us to be justified, that the statement appearing at page 20 of the Prospectus is misleading in that it fails to recognize that there were factors responsible for the traffic decline there mentioned other than delays in the delivery of Convair 880's. If in fact this decline was due solely to delays in the delivery of Convair 880's, the public could be led to believe that [19163] the condition would be non-recurring. If, on the other hand, this decline were caused by other factors which could be recurring, the true nature of the factors causing a passenger traffic decline during 1960 and the first quarter of 1961 should be disclosed. The information with respect to the responsible factors is peculiarly within the possession of TWA.

6. Referring to paragraph 5 above, the nature and extent of the delays in delivery of aircraft referred to at pages 20 and 22 of the Prospectus should be disclosed. If the delays referred to therein did in fact cause a substantial passenger traffic decline, the investing public should be advised of the detailed facts so that it may evaluate the

*Defendant's Exhibit 11-B.*

possibility or probability of delays in delivery of the Boeing aircraft which the present management of TWA proposes to commit the Company to purchase, as described on page 14 of the Prospectus. Furthermore, as will be hereinafter indicated, the availability to TWA of Convair 990's and 880's through Toolco at dates earlier than deliveries of any Boeing aircraft is a material fact which should be disclosed.

7. Since a substantial number of Convair jet aircraft are available to TWA by reason of the efforts and commitments heretofore made by Toolco, the Prospectus [19164] should contain appropriate statements covering: (a) whether the present management of TWA intends to avail itself of the opportunity to acquire such Convair equipment; (b) whether the Boeing equipment to be acquired is in addition to or in lieu of the Convair equipment; (c) the probable delivery schedules of Convair equipment as compared with Boeing equipment. Information with respect to the above should be provided particularly in view of the statements now appearing in the Prospectus as to the materiality and effect of delays in the delivery of jet aircraft.

8. Mr. Holliday, a Voting Trustee and Director, and the representative of Toolco, refused to subscribe to the Registration Statement and withdrew the power of attorney given by him to the Chairman of the Board of TWA. This fact should be disclosed, together with the facts and circumstances relating to such withdrawal. We are informed that at the meeting of the Board of Directors of May 17, 1961 Mr. Holliday stated that on advice of counsel he would not assume responsibility and liability as a director for the statements and omissions in the Prospectus. It seems to us that the action of Mr. Holliday, a representative of Toolco, is a material fact to be disclosed.

*Defendant's Exhibit 11-B.*

9. Under the caption "Summary of Consolidated Operations" at pages 8-10, footnote J states that the [19165] maximum annual interest requirements on the Debentures will be \$7,230,333.50. This footnote would convey the impression that the interest requirements of the Debentures together with other interest requirements on long term debt, which are shown as \$4,000,000 in 1960 in the table on page 9, are substantially exceeded by operating revenues. It is the understanding of Toolco that the annual interest requirements on indebtedness senior to the Debentures, which is described in the capitalization table, aggregates in excess of \$10,000,000 and that the aggregate interest requirements upon such indebtedness together with the contemplated Debentures will be approximately equal to or somewhat in excess of the operating profits for the year 1960. In that connection, it seems to us that it would be desirable, if not necessary, to indicate the probable interest obligation which may develop by reason of the financing program of approximately \$147,000,000 now underway with the lending institutions in control of TWA relating to the Boeing purchase program.

10. Under the heading "Agreement with Hughes Tool Company Concerning \$50,000,000 Revolving Credit", appearing at page 24 of the Prospectus, reference is made to an obligation of Toolco to provide TWA with a revolving [19166] credit of \$50,000,000 through the last day of the month next following the month in which TWA takes delivery of and pays for the last of the 20 Convair 880's theretofore mentioned in the Prospectus. We do not find any statement disclosing the date or estimated date when this obligation is likely to terminate. We are advised by Toolco that it believes that its obligation under that revolving credit agreement is likely to terminate on or

*Defendant's Exhibit 11-B.*

before September, 1961. This termination date is dependent upon a delivery schedule best known to Convair. Toolco does not know what inquiry, if any, has been made by TWA of Convair with respect to such schedule. In view of the importance of this matter by reason of the amount involved, it seems to us that TWA should determine and disclose the probable termination date of this revolving credit.

11. Under the heading "Remuneration" the Prospectus discloses an employment contract with Mr. Tillinghast. Toolco objects to the terms of that employment contract and hereby notifies TWA that it has requested us to consider the possibility of action with respect to it. Toolco questions the necessity for entering into such a long-term contract in order to obtain the services of an adequate chief executive, and questions the propriety of action by the lending institutions, the majority Voting Trustees and the controlling [19167] members of the Board of Directors, elected by the majority Voting Trustees, to impose upon TWA such long-term obligations surviving the termination of the voting trust. We have not had an opportunity to consider the merits of these matters. Toolco further believes, and we concur, that the Prospectus should disclose any relationships or business dealings which may have previously existed between Mr. Tillinghast and any of the lending institutions or the majority Voting Trustees or corporations controlled by either of them.

12. With respect to the heading "Litigation" appearing on page 38 of the Prospectus, Toolco hereby notifies TWA that it is contemplating, and that this firm is investigating, the possibility of commencing an action, as the beneficial owner of approximately 78% of the Common Stock of TWA, against (a) the lending institutions controlling TWA, (b)

*Defendant's Exhibit 11-B.*

the majority Voting Trustees, and (c) the individual directors controlled by the majority Voting Trustees. Toolco is also contemplating, and this firm is investigating, the commencement of an action against the lending institutions relating to the terms and conditions imposed upon TWA and Toolco in connection with the 1960 financing and other matters which may affect the validity of the existing voting trust. Toolco has also requested [19168] this firm to investigate the possibility of enjoining the consummation of the Boeing purchase transaction described at page 14 of the Prospectus, or of taking action on behalf of TWA against the persons responsible for any commitments incurred or damage suffered by TWA in connection with such program, on the ground that such program (a) is contrary to the best interest of the stockholders of TWA, (b) has been promoted for the benefit of certain lending institutions, and (c) has been promoted for the purpose of interfering with the ability of TWA to discharge the indebtedness incurred in connection with the 1960 financing program and thereby to terminate the voting trust pursuant to its terms. This firm is not in a position at this time to disclose the information it has obtained to date. It is our view, however, that the very existence of such claims is of sufficient materiality to be required to be disclosed in the Prospectus.

In view of the limited period of time allowed to counsel for Toolco in the preparation of this letter, the above may not be assumed to be a full or complete description of the nature of the claims which Toolco may assert. The above is stated primarily for the purpose of advising the interested parties as well as the Commission that Toolco has disclosed to us within the past few days material information which justifies careful consideration by this firm as to the existence of meritorious claims of the nature indicated.

[19169] 13. Throughout the relationship between Toolco and TWA prior to the establishment of the voting trust it

*Defendant's Exhibit 11-B.*

was the practice of Toolco to investigate the need of TWA for and place orders for modern types of equipment for the ultimate use and benefit of TWA. At the present time, Toolco has on order 17 Convair jet aircraft, of which 13 are Convair 990's to be delivered on schedules comparable to scheduled deliveries to American Airlines, Inc., one of TWA's major competitors. Negotiations are in progress between TWA and Toolco for the acquisition by TWA of four Convair 880's on order by Toolco, but such negotiations are not disclosed in the Prospectus. With respect to the Convair 990's Toolco believes that these aircraft will be superior in speed and adaptability to other available jet aircraft, including Boeing equipment proposed to be purchased by TWA, and will therefore be better suited to the needs and requirements of TWA than such Boeing equipment. Furthermore, the Convair equipment could be delivered to TWA and placed in service and effective utilization ahead of such Boeing equipment. Based upon information made available to us by Toolco, it appears that there may be a basis upon which TWA may assert an equitable right to the Convair equipment on order by Toolco; information made available to us by Toolco in this regard may not be disclosed at this time to the extent requested by the Commission, because a disclosure at this time of the [19170] information made available to us, without further investigation on our part, could be prejudicial to the interests of our client. The existence of such a right would be a material fact because of the definite advantage which would flow to TWA should TWA request and receive such equipment from Toolco. It also appears that the Convair equipment was ordered by Toolco with full knowledge on the part of operating personnel of TWA. Accordingly, TWA should state in the Registration Statement whether or not it claims such a right and whether or not it intends to ask Toolco to make such equipment available to it. Toolco

*Defendant's Exhibit 11-B.*

is satisfied that TWA has known for some time that the Convair equipment was available to it and hereby confirms to TWA that all or part of such equipment is available to it to the extent that the same may be needed by TWA. An unresolved question exists whether TWA is obligated to purchase such Convair equipment from Toolco at approximately its cost plus interest on invested funds. Toolco has requested this firm to review the pertinent facts and to advise as to the existence of such an obligation. We have not had an opportunity to commence the investigation so requested. The aggregate ultimate cost of the Convair equipment on order by Toolco is in excess of \$75,000,000, and it is the position of Toolco that the possible existence of such an obligation on TWA should be disclosed in any registration statement to which Toolco [19171] may acquiesce. In addition, it should be stated in the Registration Statement whether or not the Boeing equipment recently ordered by TWA would be required or could be effectively utilized in the event that TWA is found to be obligated to purchase from Toolco the Convair equipment on order by it.

Very truly yours,

SIMPSON THACHER & BARTLETT

/s/ CHESTER C. DAVIS

by Chester C. Davis

**Defendant's Exhibit 11-C.**

[19173]

**CHESTER C. DAVIS  
120 BROADWAY  
NEW YORK 5, N. Y.**

May 24, 1961

Attention of Ronald Duckworth, Secretary  
Trans World Airlines, Inc.,  
380 Madison Avenue,  
New York 17, N. Y.

Dear Sirs:

In connection with our investigation of the matters set forth in the letter to you and the Securities and Exchange Commission dated May 19, 1961, we wish to obtain from you the following documents:

1. A copy of the Company's Certificate of Incorporation;
2. A copy of the Company's By-Laws;
3. A copy of all Minutes of all meetings of the Board of Directors since the institution of the Voting Trust Agreement;
4. Copies of all reports presented to the Directors or circulated at meetings of the Board.

Very truly yours,

**CHESTER C. DAVIS**

**By ARTHUR I. SETTLES**

**Defendant's Exhibit 11-D.**

[19174]

**ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.**

**May 25, 1961**

**Re: Registration Statement of Trans World  
Airlines, Inc. (Registration No. 2-17847)**

**Attention of Mr. Ralph C. Hocker  
Securities and Exchange Commission  
Washington 25, D. C.**

**Dear Sirs:**

This will confirm my telephone conversation with Mr. Hocker yesterday afternoon with respect to the above Registration Statement of Trans World Airlines, Inc.

As I told Mr. Hocker, my client, Hughes Tool Company, disclaims any liability or responsibility with respect to said Registration Statement or any statements which appear therein, or omissions therefrom. Said Registration Statement was prepared without consultation with or approval by Hughes Tool Company or its counsel. Furthermore, Hughes Tool Company has not acquiesced in, nor does it acquiesce in, the acceleration of the effective date of said Registration Statement. However, based upon a limited review of Amendment No. 6 thereto, and Amendment No. 7 which was received by me late yesterday afternoon, Hughes Tool Company has no desire to delay appropriate action by the Securities and Exchange Commission, in the [19175] circumstances, making said Registration Statement effective. At the time I called Mr. Hocker, I had no information that the Commission had either already acted or was about to act with respect to said Registration Statement.

*Defendant's Exhibit 11-D.*

I also pointed out to Mr. Hocker that the statement appearing on page 25 of Amendment No. 6 to the effect that the delivery of the last of the Convair 880s was presently expected to occur by late summer of 1961, was substantially in accord with the latest information available to me from Hughes Tool Company as to its understanding, and was in accord with the information set forth in the letter of May 19, 1961. This information, however, and the understanding of Hughes Tool Company in that regard, is not based on recent information received from Convair. I advised Mr. Hocker that it should be understood by all concerned that although Hughes Tool Company does not question the accuracy of the statement made by Trans World Airlines, Inc. in that regard, such statement may not be based properly on anything stated in the May 19 letter.

I also pointed out to Mr. Hocker that the material appearing under the caption "Voting Trust" may not completely reveal the extent to which the two insurance companies named have been, and presumably continue to be, in control of the [19176] voting trustees, because the facts necessary for an intelligent application of the provisions of paragraph 3 of the Noteholders' Agreement dated as of December 1, 1960 are not, I believe, disclosed. I also stated to Mr. Hocker that the above comments were only for the guidance of the Commission and its staff. At the conclusion of our telephone conversation, I inquired if it was appropriate to be informed as to the current status of the Registration Statement, because I had received no information from TWA with respect thereto. Mr. Hocker then informed me that the Registration Statement either had become effective or was about to become effective at 5:30 p.m. of that day, May 24, 1961.

I am sending a copy of this letter to Trans World Airlines, Inc. attention of Mr. Charles C. Tillinghast, Jr., President, and to its counsel, Messrs. Chadbourne, Parke, White-

A-3245

*Defendant's Exhibit 11-D.*

side & Wolff, and to Messrs. Hughes, Hubbard, Blair & Reed, counsel for the Voting Trustees, for their respective information.

Very truly yours,

CHESTER C. DAVIS  
Chester C. Davis

**A-3246**

**Defendant's Exhibit 11-E.**

**[19177]**

**ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.**

**BY HAND**

**May 25, 1961**

**Trans World Airlines, Inc.  
380 Madison Avenue  
New York 17, N. Y.**

**Attention of Mr. Charles C. Tillinghast, Jr.  
President**

**Dear Sirs:**

On behalf of the Hughes Tool Company, we request that there be made available to us, not later than the close of business on Friday, May 26, 1961, all papers relating to the proposed additional financing by Trans World Airlines, Inc., in the amount of \$147 million referred to on page 14 of its Prospectus. We particularly request drafts of any loan agreements or other documents relating to this financing.

**Very truly yours,**

**CHESTER C. DAVIS**

**By ARTHUR I. SETTLES**

A-3247

*Defendant's Exhibit 11-E.*

[19178]

ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.

BY HAND

May 25, 1961

Attention of Mr. Charles C. Tillinghast, Jr.  
President

Trans World Airlines, Inc.,  
380 Madison Avenue,  
New York 17, New York.

Dear Sirs:

On behalf of the Hughes Tool Company, we request that the following information with respect to the proposed purchase of Boeing aircraft by Trans World Airlines, Inc. (TWA), as described at page 11 of TWA's Prospectus, be furnished to us immediately by telephone or telegraph:

1. Has TWA received from Boeing Airplane Company an extension of the time within which to make arrangements for the financing of such aircraft?
2. Has TWA requested any such extension of time and, if so, what response, if any, has been received from Boeing Aircraft Company?
3. Does TWA presently intend to request such an extension of time prior to May 31, 1961?

Very truly yours,

CHESTER C. DAVIS

By ARTHUR I. SETTLES

**Defendant's Exhibit 11-F.**

**[19179]**

**CHESTER C. DAVIS  
Room 3113  
ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.**

**WOrth 2-5220**

**May 26, 1961**

**To: Irving Trust Company as Agent for the  
Holders of the Equipment Notes of  
Trans World Airlines, Inc.**

**The Equitable Life Assurance Society  
of the United States**

**Attention: James F. Oates, Jr.,  
Chairman and President**

**Metropolitan Life Insurance Company**

**Attention: Frederic W. Ecker,  
Chairman**

**The Board of Directors of Trans World  
Airlines, Inc.**

**Mr. Ernest R. Breech**

**Mr. Irving S. Olds**

**Mr. Raymond M. Holliday,  
Voting Trustees.**

**Dear Sirs:**

This letter is to confirm and supplement certain positions stated on behalf of Hughes Tool Company ("Toolco") in the letter of May 19, 1961 to Trans World

*Defendant's Exhibit 11-F.*

Airlines, Inc. ("TWA"), a copy of which is enclosed herewith.

It is the desire of Toolco to confer with you or your representative as soon as possible with the objective of working out an amicable solution wherever [19180] there may be a difference of opinion.

At the outset it is the position of Toolco that its title record of ownership of more than 78% of the outstanding common stock of TWA was put in a voting trust at the insistence of certain lending institutions and with the acquiescence of Toolco in order to assist the financing program of TWA and for the limited purpose of assuring the lending institutions the repayment in accordance with their terms of certain notes of TWA to be acquired by such lending institutions.

It is therefore the position of Toolco that the voting trust and related agreements are proper and lawful only when construed within the limits hereinabove described. It was not the purpose or intention of Toolco in placing its stock in a voting trust to confer upon others the unrestricted right to deal with the property interests of Toolco represented by its ownership of TWA.

Under paragraph 3 of the Noteholders' Agreement, the lending institutions holding the majority of said notes have the absolute right for any reason whatsoever to remove two of the three voting trustees and to select their successors, and thus have absolute control over such voting trustees and TWA. It is my understanding that at the present time two insurance companies, namely, Metropolitan Life Insurance Company and Equitable Life [19181] Assurance Society of the United States, own a majority of said notes and that they therefore have such absolute control. It would seem obvious that the lending institutions represent an interest different from, and at times adverse to, the interest of the owners.

*Defendant's Exhibit 11-F.*

The voting trustees, as I understand it, have elected a majority of the present directors of TWA who are removable without cause under the by-laws of TWA at the will of a majority of the stockholders of TWA. In the circumstances here present, therefore, the present Board of Directors is biddable and subservient to the voting trustees who, in turn, are biddable and subservient to the lending institutions and to the direction of Irving Trust Company as the agent of the lending institutions.

It is the position of Toolco that the present directors of TWA are confronted with the necessity of attempting to serve two masters, namely, the owners of TWA and the interest of the lending institutions; and that, in fact, since the voting trust has been established, the Board of Directors has ignored the interest of the owners and has been entirely subservient to the will and wishes of the voting trustees. It is the further position of Toolco that the normal concept that a Board of Directors may act in accordance with its independent [19182] judgment is not applicable to preclude the need for consultation in the instant situation and that the concept must be applied in such way as to do equity among the interested parties.

Toolco recognizes that the present Board of Directors of TWA has a duty or obligation to the lending institutions with respect to matters which may have an effect on the repayment of the notes held by them; at the same time, it is the position of Toolco that the lending institutions, the voting trustees, and the directors, also have a fiduciary duty and obligation to be responsive to the interests of the owners of TWA, including Toolco which continues to be the owner of more than 78% of TWA. In the circumstances here present, Toolco, in equity, would seem to be entitled to be consulted on business decisions which vitally affect its ownership interest in TWA because normally the directors would be responsive to its ownership interest. Toolco,

*Defendant's Exhibit 11-F.*

is of course also mindful of the minority ownership which has interests, similar to those of Toolco, also requiring protection. In this connection, Toolco believes that with respect to any matter which involves any dealings between TWA and the lending institutions, the directors and voting trustees have a duty and obligation to consult with [19183] and obtain the approval of the owners.

Based upon facts presently known to me, it would seem that the lending institutions, the voting trustees and the directors of TWA, have followed a course of conduct not in accordance with the principles above stated. This is particularly troublesome when decisions are made which are likely to impose on TWA obligations beyond the term of the voting trust. For the purposes of this letter, the term of the voting trust means any time when the voting trust may terminate in accordance with its terms.

In connection with the request for an opportunity to confer with appropriate representatives of the lending institutions, the voting trustees and the individual directors of TWA, you may assume that the representative of Toolco participating in such discussion will be duly authorized and empowered to work out a settlement of the particular problems hereinafter outlined.

Among the specific areas as to which Toolco is primarily concerned at this time, and which it would like to discuss with you or your representatives, are the following:

1. The arrangement with Boeing Airplane Company ("Boeing") for the acquisition by TWA of twenty Boeing 707-131B and six 707-331B jet aircraft. Toolco [19184] strenuously objects to any such commitment by TWA for several reasons, all of which may not be set forth in this letter. Basically, Toolco does not believe that such equipment is best suited to the needs of TWA, particularly when TWA may acquire jet aircraft from Convair pursuant to arrangements heretofore made by Toolco for the benefit of

*Defendant's Exhibit 11-F.*

TWA. Toolco does not understand how the Board of Directors may justify saddling TWA with long-term obligations or equipment contrary to the wishes of the owners of TWA, particularly when such equipment and obligations undoubtedly will extend beyond the terms of the Voting Trust.

The financing program contemplated between TWA and the lending institutions constitutes self-dealing and Toolco objects to the consummation of any such arrangement without its consent. Furthermore, it would seem that the financing program contemplated by TWA would adversely affect the ability of TWA to repay at the earliest possible date the aforementioned notes and thereby terminate the voting trust arrangement. Toolco believes that the equipment available to TWA from Convair is not only more suitable to the needs of TWA than the proposed Boeing equipment but would be more competitive with the equipment to be used by its principal competitors, [19185] and that the Convair equipment would be available to TWA at an earlier date than the Boeing equipment. The current Prospectus of TWA emphasizes the economic advantages of having jet equipment available to it at the earliest possible date.

Toolco has not been consulted with respect to the proposed Boeing commitment and does not appear to have information at this time as to the current plans of TWA. One of the purposes of this letter is to put all of you on notice that Toolco intends to take all action available to it to avoid the irreparable injury which would be caused by consummation of the program disclosed in the current Prospectus relating to the purchase of Boeing equipment and that Toolco, if such program is consummated, will have no alternative but to seek to hold responsible all persons, individual or corporate, who have participated in or controlled the course of conduct followed by TWA.

Toolco hereby requests that you immediately advise the

*Defendant's Exhibit 11-F.*

undersigned as to the status of the program described in the current Prospectus relating to the purchase of Boeing equipment and as to the current negotiations with the lending institutions so that Toolco may have an adequate opportunity to review the same [19186] before they are consummated. In that connection, Toolco hereby requests that the undersigned be furnished with copies of all pertinent documents.

Toolco understands that if the Boeing transaction is not consummated, TWA may lose as a penalty the sum of \$350,000 heretofore paid by TWA to Boeing. Even though Toolco was not consulted prior to any commitment between TWA and Boeing, the undersigned or another representative of Toolco, in any discussion which may be held pursuant to the suggestion hereinabove made, will be authorized to discuss the proper allocation of any expense incurred, including any penalty which TWA may incur by reason of the termination of the proposed Boeing commitment.

2. Independently of the outcome of the proposed Boeing purchase, another matter which requires discussion is the 17 Convair jet aircraft which Toolco has contracted to purchase and the rights or obligations of Toolco and TWA with respect thereto.

3. Toolco does not question the background, personal integrity or ability of Mr. Charles Tillinghast, who has been employed as President of TWA under a long-term contract. Toolco, nevertheless, objects to any arrangement which has the effect of imposing on TWA an [19187] obligation which extends beyond the term of the voting trust, including an arrangement for the services of a chief executive who is not acceptable to Toolco as the owner of more than 78% of the common stock of TWA. Toolco recognizes that in the discharge of their obligations to the lending institutions, the voting trustees and the directors have the responsibility for obtaining the services of a competent chief

*Defendant's Exhibit 11-F.*

executive. The position of Toolco is simply that the lending institutions, the voting trustees and the Board of Directors do not have the right to impose the long-term obligation, reflected by the employment contract with Mr. Tillinghast, without the approval or consent of the owners of TWA.

4. The failure of the Board of Directors of TWA to submit to the stockholders of TWA the merger negotiated between TWA and Northeast Airlines, Inc. (hereinafter "Northeast") is another matter of concern to Toolco. Prior to the creation of the voting trust, the management of TWA, with the approval of the majority of the owners of TWA, considered such a merger to be in the best interests of TWA. The lending institutions, the voting trustees and the Board of Directors permitted this agreement of merger to lapse without submitting the matter to the owners of TWA and without consulting Toolco. [19188] It is difficult to see how the lending institutions would have been adversely affected by such a merger since the notes held by them constitute a senior indebtedness of TWA. Toolco recognizes that the new Board of Directors and a new chief executive of TWA may not have the same business judgment as the prior management of TWA. Since the present Board of Directors of TWA is responsible to two masters who may have different interests, it would seem that the proper course of action would have been to submit the matter for appropriate action or direction by the owners of TWA. Toolco understands that unless immediate action is taken the opportunity to merge with Northeast may be lost forever. You are, therefore, requested to take immediate action to reinstitute discussions with Northeast looking toward such a merger, so as to minimize the possible irreparable injury which will be suffered by TWA should this opportunity be lost.

In the event that it is the position of the lending institu-

*Defendant's Exhibit 11-F.*

tions or the voting trustees or the Board of Directors that a merger with Northeast would impose a financial burden upon TWA, adversely affecting the position of the lending institutions, it is the position of Toolco that it is prepared to discuss the possibility of assuming any such financial risk.

[19189] The letter of May 19, 1961, addressed to TWA and the Securities and Exchange Commission is enclosed for your further information with respect to other positions taken by Toolco which are not mentioned herein but which are hereby reconfirmed. A letter was delivered by hand this morning, Friday, May 26, to TWA and its counsel Messrs. Chadbourne, Parke, Whiteside & Wolff, and to the voting trustees at the office of TWA, and to their counsel Messrs. Hughes, Hubbard, Blair & Reed, requesting information as to whether TWA has received from Boeing an extension of time within which to make arrangements for the financing of the contemplated purchase of equipment from it; whether TWA has requested any such extension of time, and if so, what response, if any, has been received from Boeing and whether TWA intends to request such an extension of time prior to May 31, 1961. It is respectfully requested that the undersigned be advised with respect to the queries set forth in said letter as soon as possible and not later than Monday noon, May 29.

The undersigned, together with other representatives of Toolco, will hold themselves available to meet with you at all convenient times.

[19190] A copy of this letter is being forwarded to Messrs. Chadbourne, Parke, Whiteside & Wolff, counsel for TWA, and to Messrs. Hughes, Hubbard, Blair & Reed, counsel for the voting trustees, for their respective information.

Very truly yours,

CHESTER C. DAVIS  
Chester C. Davis

Defendant's Exhibit 11-G.

[19191]

[WESTERN UNION TELEGRAM]

COPY — HAND DELIVERY TO MR. TILLINGHAST    MAY 31, 1961  
FAST WIRE

BOEING COMPANY  
SEATTLE, WASHINGTON  
and  
BOEING COMPANY  
45 ROCKEFELLER PLAZA, NEW YORK

REFERRING TO LETTER DATED MAY 25 ON BEHALF OF HUGHES TOOL COMPANY, THIS IS TO NOTIFY YOU THAT AS BENEFICIAL OWNER OF MORE THAN 75% OF THE OUTSTANDING COMMON STOCK OF TWA HUGHES TOOL COMPANY DISPUTES THE POWER AND AUTHORITY OF THE BOARD OF DIRECTORS OR THE MANAGEMENT OF TWA TO ENTER INTO, COMMIT ITSELF FOR OR CONSUMMATE THE PURCHASE OF JET AIRCRAFT FROM YOU PURSUANT TO THE AGREEMENTS DATED APRIL 30, 1961 OR OTHERWISE, OR TO ENTER INTO, COMMIT ITSELF FOR OR CONSUMMATE THE FINANCING ARRANGEMENTS CONTEMPLATED BY SAID AGREEMENTS. THE PRESENT BOARD OF DIRECTORS OF TWA AND MANAGEMENT OF TWA ARE CURRENTLY UNDER THE DIRECTION AND CONTROL AND ARE SUBSERVIENT TO CERTAIN LENDING INSTITUTIONS AND THEIR INTEREST, AND TO VOTING TRUSTEE SUBJECT TO CONTROL BY SAID LENDING INSTITUTIONS. SAID BOARD OF DIRECTORS AND MANAGEMENT OF TWA ARE NOT RESPONSIVE TO THE WISHES AND DESIRES OF THE OWNERS OF TWA AND ARE NOT CONCERNED SOLELY WITH THE BEST INTERESTS OF TWA. THE VOTING TRUST AGREEMENT IS SUBJECT TO TERMINATION PURSUANT TO ITS TERMS AT ANY TIME THAT NOTES HELD BY SAID LENDING INSTITUTIONS ARE PAID IN FULL, AT WHICH TIME TWA WILL REVERT TO THE CONTROL OF THE OWNERS OF TWA. THE AGREEMENTS AND FINANCING ABOVE MENTIONED WOULD IMPOSE OBLIGATIONS ON TWA BEYOND THE TERM OF SAID VOTING TRUST AND WOULD TEND TO PREVENT OR DELAY THE TERMINATION OF SAID VOTING TRUST, ADVERSELY AFFECTING THE OWNERS OF TWA. YOU ARE HEREBY NOTIFIED [19192] THAT ANY CONTRACT OR COMMITMENT FOR THE PURCHASE OF JET EQUIPMENT FROM YOU BY TWA SHOULD NOT BE CONSUMMATED OR IMPLEMENTED WITHOUT APPROVAL BY THE OWNERS OF TWA AND THAT YOU WILL BE PROCEEDING AT YOUR OWN RISK IF YOU PARTICIPATE IN IM-

*Defendant's Exhibit 11-G.*

POSING THE OBLIGATIONS CONTEMPLATED BY SAID AGREEMENTS AND RELATED FINANCING ON TWA. THE CURRENTLY PROPOSED FINANCING BY TWA INVOLVES UNJUSTIFIABLE SELF DEALING BY THE LENDING INSTITUTIONS NOW CONTROLLING TWA. YOU ARE HEREBY FURTHER REQUESTED NOT TO APPROVE, RATIFY OR CONSENT TO ANY PROPOSED FINANCING ARRANGEMENT WITH THE LENDING INSTITUTIONS CURRENTLY HAVING THE POWER TO CONTROL TWA OR ANY OTHER FINANCING WHICH INVOLVES, DIRECTLY OR INDIRECTLY, SELF DEALING, WITHOUT THE CONSENT OF THE OWNERS OF TWA. AS A SUB-ORDINATED CREDITOR OF TWA, HUGHES TOOL COMPANY ALSO OBJECTS TO THE IMPOSITION OF SENIOR INDEBTEDNESS AS CONTEMPLATED BY THE PROPOSED FINANCING RELATING TO SAID AGREEMENTS. WE ARE ADVISED BY TWA THAT NO AGREEMENT CONCERNING THE PROPOSED FINANCING HAS YET BEEN EXECUTED AND THAT TWA HAS NOT YET DETERMINED WHETHER OR NOT TO REQUEST AN EXTENSION OF CERTAIN DATES CONTAINED IN THE SAID AGREEMENTS. YOU ARE HEREBY REQUESTED TO NOTIFY CHESTER C. DAVIS OF 120 BROADWAY, NEW YORK, OUR COUNSEL, BEFORE YOU APPROVE OF ANY FINANCING ARRANGEMENT SUBMITTED TO YOU BY TWA PURSUANT TO THE PROVISIONS OF SAID AGREEMENTS SO THAT HE MAY TAKE APPROPRIATE ACTION TO PROTECT OUR INTERESTS.

HUGHES TOOL COMPANY

BY RAYMOND M. HOLLIDAY

Defendant's Exhibit 11-H.

[19193]

HUGHES TOOL COMPANY

EXECUTIVE OFFICES  
TWENTY-SECOND FLOOR GULF BUILDING  
HOUSTON 2, TEXAS

Raymond M. Holliday  
Vice President

May 31, 1961

BY HAND

Charles C. Tillinghast, Jr., Esq., President,  
Trans World Airlines, Inc.,  
380 Madison Avenue,  
New York, New York.

Dear Sir:

This will confirm our telegram sent early this afternoon in response to your night letter telegram of May 29th and your letter of the same date which we received this morning. As we stated in our telegram we do have information, some of which has been recently developed, of which you have not been informed and which should be considered by the Board of Directors of TWA, in the interest of all the stockholders of TWA and others interested in its best management, concerning the relative superiority of the Convair aircraft for the operating needs of TWA and the advantages, including advantages with respect to financing, which would result from its acquisition of available Convair aircraft, based upon information and proposals to be presented to you.

Immediately upon the receipt of your letter we took steps to have the information which you requested for.

*Defendant's Exhibit 11-H.*

warded to us in New York. Much of that information is in the several [19194] offices of Hughes Tool Company, including the California office. Moreover, until we have received the material requested in our telegram we will not be in a position to present all relevant information as we have no way of knowing what information you have already received. Accordingly your suggestion of today that this information be delivered to you this afternoon was completely unreasonable and your insistence in that regard can only be interpreted as an indication that your letter of May 29th was not written in good faith.

We expect to present relevant information to you not later than Friday June 2nd and will be in touch with you to arrange for an appropriate meeting, assuming of course that you are still willing to carry out the intentions expressed in your letter to me dated May 29, 1961.

Very truly yours,

RAYMOND M. HOLLIDAY

Defendant's Exhibit 11-I.

[19195]

COPY TELEGRAM DATED JUNE 1, 1961 10:42 P.M.

TO: C. S. ROWE OF CHADBOURNE PARKE

REFERRING TO HUGHES TOOL COMPANY LETTER AND TELEGRAM OF MAY 31, 1961, TO MR. TILLINGHAST PRESIDENT OF TWA THIS IS TO REQUEST THAT YOU ADVISE MR. TILLINGHAST THAT I WILL BE PREPARED BY 2 P.M. TOMORROW JUNE 2, 1961, TO PRESENT TO HIM AND SUCH MEMBERS OF THE EXECUTIVE COMMITTEE OF TWA AND OF ITS BOARD OF DIRECTORS AS HE BELIEVES SHOULD BE PRESENT. INFORMATION RELATING TO THE REQUEST MADE IN HIS MAY 29, 1961, LETTER TO MR. HOLLIDAY. BECAUSE OF THE IMPORTANCE OF THE MATTER TO THE VARIOUS INTERESTED PARTIES AND IN VIEW OF THE APPARENT DECISION ANNOUNCED BY MR. TILLINGHAST, HUGHES TOOL CO. REQUESTS THAT MR. BREECH AND MR. OLDS AS VOTING TRUSTEES BE PRESENT AT THE TIME THIS INFORMATION BE PRESENTED. ACCORDINGLY, I AM SENDING A COPY OF THE TELEGRAM TO THEIR COUNSEL, MR. REED, AND I AM ALSO SENDING COPIES TO MR. BREECH AND MR. OLDS. I WOULD APPRECIATE IT IF YOU WOULD ADVISE ME AS SOON AS POSSIBLE IF 2 P.M. TOMORROW IS CONVENIENT FOR SUCH PERSONS TO BE PRESENT. IF SUCH TIME IS INCONVENIENT PLEASE ADVISE ME THE EARLIEST DATE AND TIME CONVENIENT TO ALL CONCERNED.

SIGNED: HUGHES TOOL CO.

BY: CHESTER C. DAVIS

RECEIVED 8:45 AM

Defendant's Exhibit 11-J.

[19196]

[WESTERN UNION TELEGRAM]

UDMRS UD-NA059  
LONG RX PD NEW YORK NY 2-1256A EDT  
CHARLES C TILLINGHAST JR, PRESIDENT TRANS WORLD AIR-  
LINES INC  
300 MADISON AVE DELR 10TH FLR RECEPTION DESK NYK

REFERRED TO YOUR LETTER OF MAY 29, 1961 TO ME IN WHICH  
YOU REQUESTED CERTAIN INFORMATION FROM HUGHES TOOL  
COMPANY AND TO THE PUBLIC ANNOUNCEMENTS ATTRIBUTED  
TO YOU TO THE EFFECT THAT TWA HAD ARRANGED FINANCING  
FOR THE PURCHASE OF BOEING EQUIPMENT AND HAD COM-  
MITTED ITSELF TO THE PURCHASE OF SUCH EQUIPMENT, I, AS  
A DIRECTOR OF TWA, REQUEST THAT YOU NOTIFY ME AT ROOM  
300 WALDORF TOWERS, IMMEDIATELY, AND I ANY VENT BE-  
FORE 2:00 P.M. JUNE 2, 1961, OF THE EXACT STATUS OF SAID  
FINANCING AND OF THE COMMITMENTS, IF ANY, TO BOEING  
FOR THE PURCHASE OF EQUIPMENT. I FURTHER REQUEST THAT  
I BE ADVISED IMMEDIATELY OF ANY CHANGE IN THE STATUS  
OF SAID FINANCING OR COMMITMENT TO PURCHASE. I AM  
SENDING A COPY OF THIS TELEGRAM TO MR. CARL ROWE COUN-  
SEL TO TWA AND TO MR. FRANCIS C. REED COUNSEL TO THE  
VOTING TRUSTEES FOR THE INFORMATION OF HIS CLIENTS

RAYMOND M HOLLIDAY

2 1961 2028 2:00 2 1961.

Defendant's Exhibit 11-K.

【19197】

CHESTER C. DAVIS  
ROOM 3113  
ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.

PHONE WOrth 2-5220

BY HAND

June 4, 1961

Re Hughes Tool Company—TWA

Carl Rowe, Esq.  
Chadbourne, Parke, Whiteside & Wolff  
25 Broadway  
New York, N. Y.

Dear Mr. Rowe:

There are enclosed two copies of transcription of notes taken on my behalf of the conference which we had Friday afternoon, which I have hastily reviewed and which seem to me fairly present the substance of the material I presented at such conference. Undoubtedly, some of the items identified by me in that conference deserve further consideration. I must emphasize that I have been able to present only the material which could be assembled in a very short period of time following Mr. Tillinghast's letter of May 29. I am asking other officers of Hughes Tool Company to review the enclosed notes of our conference. I am prepared to obtain such facts or data as you may need to

*Defendant's Exhibit 11-K.*

confirm the statements made by me on behalf of Hughes Tool Company relating to the desirability of Convair equipment for the needs of TWA.

【19198】 Notwithstanding your statement that TWA has not exercised its right to an "out" from the Boeing commitment, I understood Mr. Tillinghast to say that consideration could still be given to Convair equipment, including the thirteen 990s on order by Hughes Tool Company, provided that certain conditions were promptly met. I am considerably disturbed at the suggestion of a penalty bond, because I understand that it is a most unusual request. It seems to me that we should be able to satisfy TWA and ourselves as to the delivery schedules of Convair equipment based upon a firm commitment by Convair as to its ability to meet a particular delivery schedule. It seems to me, therefore, that we should promptly arrange for a meeting with qualified representatives of Convair to discuss this matter.

Insofar as the terms on which the thirteen 990s on order by Hughes Tool Company are available to TWA, it is relatively easy to prepare such a tender in writing insofar as it relates to the overall price of such equipment, and progress payments, heretofore made or payable in the future, pursuant to the terms of the contract between Hughes Tool Company and Convair. It may be, however, that Mr. Tillinghast had in mind a proposal relating to a financing program by TWA. As previously indicated, I assume that the lending institutions with which TWA has been dealing in connection with the financing of the Boeing equipment would be 【19199】 equally available to TWA for the financing of the Convair equipment. It would be most disturbing indeed if it were otherwise. At the same time, as previously indicated to you and others, Hughes Tool Company by reason of its investment in TWA and its interest in the voting trust which it entered into in 1960 so as to enable

**A-3264**

*Defendant's Exhibit 11-K.*

TWA to obtain financing at that time, has a substantial interest to protect in connection with any proposed financing program by TWA. Therefore, in order to expedite matters as much as possible, you are hereby requested to submit to me or to Mr. Holliday immediately the detailed terms of the financing currently being negotiated by TWA with certain lending institutions.

I am sending a copy of this letter and enclosures to Mr. Reed of Hughes, Hubbard, Blair & Reed, counsel for the voting trustees, so that he and his clients may likewise consider the above, as well as the subjects of the conference held Friday afternoon.

Very truly yours,

**CHESTER C. DAVIS**

Enclosures

A-3265

Defendant's Exhibit 11-L.

[19200]

C O P Y

[LETTERHEAD OF]

CHESTER C. DAVIS  
ROOM 3113  
120 BROADWAY  
NEW YORK 5

June 4, 1961

By Hand

Irving S. Olds, Esq.  
14 Wall Street  
New York 5, N. Y.

Dear Mr. Olds:

This refers to your letter to me of June 2, 1961. The views and objections of Hughes Tool Company relating to the Boeing purchases program by TWA go beyond a mere comparison of the types of aircraft manufactured by Boeing and Convair, and the preference of Hughes Tool Company for Convair jet equipment. The transactions described in the current prospectus of TWA, if consummated, would have serious long term economic consequences to TWA and to Hughes Tool Company. Notwithstanding an immediate response to the May 29 letter of Mr. Tillinghast, there appeared a public announcement on Thursday, June 1, attributed to Mr. Tillinghast, indicating that a decision had been made by the management of TWA committing it to the Boeing purchases program. For that reason, I requested on behalf of Hughes Tool Company, an

*Defendant's Exhibit 11-L.*

opportunity to present our views to you and Mr. Breech as voting trustees, so that you could consider exercising the legal rights vested in you as voting trustees for the protection of the beneficial interest of Hughes Tool Company.

【19201】 At the present time, Hughes Tool Company, having put its ownership interest in TWA in a voting trust for the purpose of assisting TWA to consummate the 1960 financing, is dependent upon action by the voting trustees and the exercise of their legal powers as voting trustees for the protection of its ownership interest in TWA.

You may consider this letter as a request by Hughes Tool Company for a meeting at the earliest possible moment with you and Mr. Breech, so that you may consider the request of Hughes Tool Company that the voting trustees take appropriate action and exercise the powers vested in them for the protection of Hughes Tool Company. In that connection I would suggest that the management of TWA be notified, on behalf of the voting trustees, to maintain or restore the ability of TWA to reject the Boeing purchases at least until after such a meeting.

I am sending a copy of this letter to Mr. Reed of Hughes, Hubbard, Blair & Reed, counsel for the voting trustees. At the moment, the whereabouts of Mr. Breech are not known to us.

Very truly yours,

/s/ CHESTER C. DAVIS

A-3267

Defendant's Exhibit 11-M.

[19202]

CHESTER C. DAVIS  
Room 3113  
One Twenty Broadway  
New York 5, N. Y.

PHONE WORTH 2-5220

AM MAIL

June 8, 1961

Mr. Ernest R. Breech  
12723 Telegraph Road  
Detroit 39, Michigan

Dear Mr. Breech:

Referring to your letter of June 6, 1961, I was not aware that Mr. Settles on my behalf had submitted a request for information directly to you. We have not yet received all of the information requested of TWA.

At the moment, I am particularly concerned as to the terms of the proposed financing which Mr. Tillinghast has described as progressing satisfactorily. I appreciate the importance of such financing to all parties concerned and, therefore, I hope that this matter will be discussed with me as a representative of Hughes Tool Company at the earliest possible moment so that any proposed arrangement may be reviewed from the point of view of Hughes Tool Company.

I also hope that you have no personal objection to the position which I am taking on behalf of Hughes Tool Company to the effect that the Voting Trustees, having the

A-3268

*Defendant's Exhibit 11-M.*

legal power to control the Board of Directors and therefore the management of TWA, are proper persons to whom Hughes Tool [19203] Company may appeal for assistance or protective action consistent with the duties and obligations arising under the Voting Trust, which I am sure are recognized by all the Voting Trustees.

I am sending a copy of this letter to Mr. Reed of Hughes, Hubbard, Blair & Reed, counsel for the Voting Trustees, for his information.

Sincerely,

CHESTER C. DAVIS

A-3269

**Defendant's Exhibit 11-N.**

[19204]

**HUGHES TOOL COMPANY**  
**EXECUTIVE OFFICES**  
**TWENTY-SECOND FLOOR GULF BUILDING**  
**HOUSTON 2, TEXAS**

**Raymond M. Holliday**  
Vice President

Trans World Airlines, Inc.  
390 Madison Avenue  
New York 17, N. Y.

June 9, 1961

Attention: Mr. Charles C. Tillinghast, Jr.  
President

Dear Sirs:

Referring to the representations made by Mr. Chester C. Davis on behalf of the Hughes Tool Company at a conference held the afternoon of June 2, 1961, this will confirm that Hughes Tool Company has currently on order from General Dynamics Corporation thirteen (13) Model 990 (formerly Model 600) aircraft which are available to Trans World Airlines, (TWA). Hughes Tool Company claims that TWA is obligated to acquire said aircraft in accordance with past practices. Said 13 aircraft are being manufactured by General Dynamics Corporation under a Purchase Agreement dated November 10, 1960, as amended February 22, 1961 (said Agreement as so amended being hereafter referred to as the "Purchase Agreement"). The Purchase Agreement provides for the delivery of the first of said aircraft in December, 1961 and of the remaining aircraft at the rate of 3 per month thereafter through April, 1962. You should note, however, that such delivery schedule is contingent upon certain [19205] customer equipment being furnished to General Dynamics Corporation by a

*Defendant's Exhibit 11-N.*

specified date, and that in order to maintain said delivery schedule immediate action is required by TWA. Hughes Tool Company assumes that you are fully familiar with said Purchase Agreement. If you do not have a copy thereof, you may inspect same at the offices of Chester C. Davis, 120 Broadway, Room 3113, New York, New York, or upon request a duplicate copy will be furnished to you.

Hughes Tool Company hereby reaffirms that it is prepared to assign to TWA all of its rights to acquire said aircraft pursuant to the Purchase Agreement, in accordance with past practices, namely, in consideration of an agreement by TWA to pay:

- (1) The balance of the purchase price of said aircraft;
- (2) All amounts hereafter payable for customer-furnished equipment installed or to be installed in said aircraft; and
- (3) The undepreciated cost of said aircraft to Hughes Tool Company.

As in the past, the phrase "the undepreciated cost to Hughes Tool Company" means the sum of:

- (a) All amounts Hughes Tool Company shall have paid the vendors (in cash or with notes) with respect [19206] to said aircraft including amounts paid vendors of customer-furnished equipment;
- (b) All other costs, including expenses in connection with the aircraft or other related property; and
- (c) An amount representing interest on items (a) and (b) at the rate of 5½% per annum, computed on the average amount of the outstanding payments applicable to such aircraft and by considering the payments made as outstanding from the

*Defendant's Exhibit 11-N.*

respective dates such payments were made and until repayment thereof to Hughes Tool Company.

With respect to the suggestion made by Mr. Tillinghast at the abovementioned conference concerning adequate assurances as to the delivery dates of such aircraft, Hughes Tool Company believes that this is a matter which should be discussed between TWA and General Dynamics Corporation. Hughes Tool Company is prepared to participate in any such discussions and to assist TWA to the extent possible in obtaining appropriate assurances from General Dynamics Corporation. In this connection TWA should recognize that, in accordance with past practices and prior to the change in management of TWA, it was customary for qualified personnel of TWA to be made available to General Dynamics Corporation as a contract representative or otherwise [19207] for the purpose of complying with the requirements of any purchase agreement and to assist in and expedite the ultimate delivery of the aircraft covered by such purchase agreement.

As to the terms of payments or payment dates to be made or met by TWA to Hughes Tool Company upon the assumption by TWA of the Purchase Agreement, Hughes Tool Company is prepared to discuss same with TWA at any time. Hughes Tool Company is also willing to furnish to TWA any further information available to Hughes Tool Company which TWA requires with respect to said aircraft and with respect to the advantages which Hughes Tool Company believes would inure to the benefit of TWA from the acquisition of said aircraft by TWA. Hughes Tool Company understands that General Dynamics Corporation is prepared to join in or otherwise cooperate in the assignment of the Purchase Agreement to TWA.

In addition to the above, Hughes Tool Company retains its willingness to make available or to cause to be made available to TWA, on comparable terms, 4 Convair

*Defendant's Exhibit 11-N.*

880's which, according to General Dynamics Corporation, would be available for delivery to TWA as follows:

One in August, 1961  
One in September, 1961  
Two in October, 1961

The said 4 Convair 880's are in the process of completion with the configuration designed by TWA.

【19208】 Furthermore, upon the assumption by TWA of the Purchase Agreement Hughes Tool Company would use its best efforts to cause General Dynamics Corporation to make available to TWA an additional 4 Convair 880 M's for delivery at approximately the same time as the 4 Convair 880's hereinabove mentioned.

The availability to TWA of the above mentioned aircraft depends upon immediate action by TWA.

In order to avoid any further delay in making available to TWA the 13 Model 990 aircraft and in order to insure the availability thereof to TWA, will you please indicate your willingness to accept an assignment of the Purchase Agreement by having a duly authorized officer of TWA execute in the space hereinbelow provided a duplicate of this letter enclosed for that purpose and return same to the undersigned or to Chester C. Davis, 120 Broadway, Room 3113, New York, New York.

Very truly yours,

HUGHES TOOL COMPANY

By RAYMOND M. HOLLIDAY  
Vice President

ACCEPTED:

TRANS WORLD AIRLINES, INC.

By .....

Defendant's Exhibit 11-O.

[19209]

HUGHES TOOL COMPANY  
EXECUTIVE OFFICES  
TWENTY-SECOND FLOOR GULF BUILDING  
HOUSTON 2, TEXAS

Raymond M. Holliday  
Vice President

June 10, 1961

To:

Trans World Airlines, Inc.  
380 Madison Avenue  
New York 17, N. Y.

Attention: Mr. Charles C. Tillinghast, Jr.  
President

Mr. Ernest R. Breech  
Mr. Irving S. Olds  
Mr. Raymond M. Holliday,  
Voting Trustees

Irving Trust Company as Agent for the  
Holders of the Equipment Notes of  
Trans World Airlines, Inc.

Attention: Mr. Robert S. Kerr,  
Vice President

The Equitable Life Assurance Society  
of the United States

Attention: Mr. James F. Oates, Jr.  
Chairman and President

Metropolitan Life Insurance Company

Attention: Mr. Frederic W. Ecker,  
Chairman

*Defendant's Exhibit 11-O.*

Gentlemen:

Referring to previous correspondence and conferences relating to the need of Trans World Airlines, Inc. (TWA), for additional jet aircraft, the financing thereof, the interests of Hughes Tool Company and its positions relating thereto, and in an [19210] effort to arrive at a solution of the various questions involved, Hughes Tool Company hereby submits three separate and distinct proposals. You may accept any one or any two or all three of said proposals. This is also to advise you that Mr. Chester C. Davis is authorized to discuss with you said proposals and is fully empowered by Hughes Tool Company to commit Hughes Tool Company with respect to any or all of said proposals.

**PROPOSAL NUMBER ONE**

Hughes Tool Company hereby offers to guarantee subscription by the stockholders of TWA to an offering of 100 million dollars of additional common stock of TWA (or such other equity security or securities as may be mutually agreed upon), such guarantee to be comparable to the one agreed upon in the Hughes Financing and Subordination Agreement of December, 1960, in that Hughes Tool Company will agree to subscribe to a pro rata share of any such new offering and will subscribe to any portion unsubscribed by the other stockholders of TWA up to a maximum amount of 100 million dollars.

Should you question the ability of Hughes Tool Company to perform or its good faith in submitting the offer represented by this proposal, Hughes Tool Company is prepared [19211] to place in escrow securities of a value commensurate with such undertaking which would be forfeited in the event that Hughes Tool Company fails to perform in accordance with any obligation it undertakes pursuant to this proposal.

*Defendant's Exhibit 11-O.*

The foregoing proposal is open for consideration by you for a period of ten days from the date hereof. If, at the end of that period, you are favorably disposed to an acceptance of this proposal, but desire additional time for a definitive acceptance thereof, and so indicate in writing, Hughes Tool Company would give careful consideration to a reasonable request for an extension of time of the offer represented by this proposal.

It is not a condition of this proposal that TWA acquire, to supplement its fleet of jet aircraft, either Boeing aircraft or Convair aircraft or any combination thereof or any other type of aircraft. The foregoing offer, however, is conditioned upon termination of the existing voting trust with respect to the shares of common stock of TWA owned by Hughes Tool Company and the transfer and return of all of said shares to Hughes Tool Company.

In connection with your consideration of this proposal, Hughes Tool Company points out the following:

(a) Hughes Tool Company would guarantee to TWA an additional 100 million dollars of equity capital which would [19212] not only further secure the lending institutions, but would enable TWA to undertake an aggressive program for acquiring additional jet aircraft which, according to our understanding of your position, are unquestionably desired by TWA. Furthermore, with such additional equity capital, TWA should be able to obtain without difficulty adequate financing from the present lending institutions or others for expanding its present jet aircraft fleet with either Boeing aircraft or Convair aircraft or both as may be determined by the management of TWA.

(b) If this proposal is accepted, it would not be the intention of Hughes Tool Company to change the present management of TWA. The Mortgage Indenture of December 1960, securing the notes held by the lending institutions,

*Defendant's Exhibit 11-O.*

contains provisions which, upon termination of the voting trust, adequately protect the noteholders with respect to the management of the Company. If this proposal is accepted, Hughes Tool Company will agree to the continuance of these provisions, which are sometimes called "the management clause", without change.

**PROPOSAL NUMBER TWO**

Hughes Tool Company, in addition to its having guaranteed the purchase from TWA of 100 million dollars of subordinated income debentures currently offered to the stockholders of TWA, hereby offers to subscribe to an additional \$11,235,900 principal amount of such debentures with warrants attached at the offering price thereof, payable in cash at the closing to be held Tuesday, June 13, 1961, provided that TWA will commit itself to acquire, and to apply said sum to [19213] amounts heretofore paid by Hughes Tool Company or now due and payable by it to General Dynamics Corporation with respect to, 13 Model 990 (formerly Model 600) jet aircraft which were heretofore ordered by Hughes Tool Company from General Dynamics Corporation for the benefit of TWA and which are available to TWA, pursuant to that commitment by Hughes Tool Company, upon terms and conditions similar to the terms and conditions under which Hughes Tool Company has heretofore made aircraft available to TWA. Said terms and conditions are more fully described under Proposal Number Three.

**PROPOSAL NUMBER THREE**

Hughes Tool Company hereby reaffirms that it is prepared to assign to TWA, at Hughes Tool Company's cost in accordance with past practices of Hughes Tool Company, all rights to acquire from General Dynamics Corporation 13 Model 990 (formerly Model 600) aircraft under a

*Defendant's Exhibit 11-O.*

purchase agreement dated November 10, 1960 as amended February 22, 1961 between Hughes Tool Company and General Dynamic Corporation. In addition, Hughes Tool Company reaffirms its willingness to make available or to cause to be made available to TWA on comparable terms four Convair Model 880's which, according to General Dynamics Corporation, will be available for delivery to TWA as follows: one in August, 1961; one in September, 1961 and two in October, 1961. [19214] Said four Convair 880's are in the process of completion by General Dynamic Corporation with the configuration designed by TWA. Upon the acceptance of this proposal Hughes Tool Company will use its best efforts to cause General Dynamics Corporation to make available, if TWA wishes to have them, an additional four Convair 880 M's for delivery at approximately the same time as the four Convair 880's. There is attached hereto, as a separate letter dated June 9, 1961, a more complete statement of this proposal.

You will notice that favorable consideration of Proposal Number Two hereinabove set forth requires action on your part on or before June 13, 1961, because Hughes Tool Company is informed that the availability of the debentures may expire on that date. If you feel that you need additional time to consider Proposal Number Two, Hughes Tool Company is prepared to discuss with you the feasibility of extending such time and to take such action as may be appropriate toward that end.

In order to expedite favorable consideration by you of the above, copies hereof are being delivered to Francis Reed, Esq., of Messrs. Hughes, Hubbard, Blair & Reed, counsel for the voting trustees and to Messrs. Cladbourne, Parks, Whiteside & Wolff, counsel for TWA. Mr. Reed has also been requested to communicate to appropriate individuals, by telephone or otherwise, as promptly as possible the substance of [19215] the above.

A-3278

*Defendant's Exhibit 11-O.*

Mr. Chester C. Davis, who is empowered to discuss all or any of the above proposals and to take whatever action is necessary to commit Hughes Tool Company with respect thereto, will be continually available to you during the next ten days.

Very truly yours,

HUGHES TOOL COMPANY

By RAYMOND M. HOLLIDAY  
Vice President

A-3279

**Defendant's Exhibit 11-P.**

[19216]

(Telegram received by Irving Trust Co., New York City,  
8:11 P.M. June 20, 1961—Telephoned to Mr. Sessel at  
home)

**TO: MR. BEN-FLEMING SESSEL**

"AS A DIRECTOR OF TWA I URGE YOU TO ATTEND THE MEETING OF THE BOARD OF DIRECTORS TO BE HELD ON JUNE 21, 1961, 9:30 AM. I AM INFORMED THAT ACTION WILL HAVE TO BE TAKEN AT THAT MEETING WITH RESPECT TO THE THREE PROPOSALS SUBMITTED BY HUGHES TOOL COMPANY TO TWA AS SET FORTH IN ITS LETTER DATED JUNE 10, 1961. ONE OF SAID PROPOSALS IS AN OFFER BY HUGHES TOOL COMPANY GUARANTEEING TO TWA \$100,000,000 OF ADDITIONAL EQUITY CAPITAL. SAID PROPOSALS WILL EXPIRE JUNE 22, 1961 UNLESS ACTION IS TAKEN INDICATING A DISPOSITION TO ACCEPT SAID PROPOSAL. IF YOU ARE NOT FAMILIAR WITH THE TERMS OF SAID PROPOSAL, YOU MAY CALL ME AT THE WALDORF-ASTORIA HOTEL IN NEW YORK CITY, ROOM 2628 OR CHESTER C. DAVIS, 120 BROADWAY, NEW YORK CITY AT WORTH 2-5220."

**RAYMOND M. HOLLIDAY**

**HUGHES TOOL COMPANY**

Defendant's Exhibit 11-Q.

[19217]

HUGHES TOOL COMPANY

EXECUTIVE OFFICES  
TWENTY-SECOND FLOOR GULF BUILDING  
HOUSTON 2, TEXAS

Raymond M. Holliday  
Vice President

June 21, 1961

To the Board of Directors  
of Trans World Airlines, Inc.

Dear Sirs:

I sincerely regret that due to ill health I was unable to attend today's meeting of the Board, as I had planned. As soon as I was able to do so, I sent a message to Mr. Tillinghast informing him that I would be unable to attend the meeting, that Mr. Davis, however, was available and waiting outside the Board room. I asked that Mr. Davis be given an opportunity to appear before the Board to discuss the proposals of Hughes Tool Company set forth in its letter of June 10, 1961 and present pertinent information with respect thereto. I understand that this request was not granted and that Mr. Davis was not given an opportunity to appear at the meeting.

The primary purpose of this letter is to present to you some of my views as a director of TWA.

At the outset, I should point out that Mr. Tillinghast's letter of June 16, 1961 addressed to me at Houston, [19218] Texas, should have been addressed to Mr. Davis, because the June 10 letter of Hughes Tool Company makes it clear that Mr. Davis is the one who is authorized to discuss the proposals made therein and to commit Hughes Tool Company with respect thereto. The approach taken by Mr.

*Defendant's Exhibit 11-Q.*

Tillinghast in his letter, together with the fact that no one on behalf of TWA has communicated with Mr. Davis with respect to the proposals, indicates to me that an effort is being made to create a record to justify their rejection, rather than a bona fide effort to explore the advantages to TWA of the acceptance of one or more of those proposals and in particular the many important advantages to TWA in accepting Proposal Number One.

Mr. Tillinghast states in his letter that "TWA has suffered greatly from its under-capitalization of the past and we would wish to take every reasonable step to achieve an improvement in our debt-equity ratio." It seems to me, therefore, that immediate steps should be taken to indicate a desire on the part of TWA to accept Proposal Number One so that a reasonable extension of time may be sought from Mr. Davis for working out the implementation of that proposal. Mr. Tillinghast appears to be concerned that such implementation "would require approval by the Civil Aeronautics Board". It is my understanding, confirmed to me by Mr. Davis, that [19219] Proposal Number One is not conditioned upon any approval by the Civil Aeronautics Board. In other words, should Proposal Number One be accepted by TWA and should the parties to the voting trust arrangement consent to its termination, Hughes Tool Company would become committed to its guarantee to TWA of one hundred million dollars of additional equity capital pursuant to the terms of Proposal Number One, whether or not the Civil Aeronautics Board approved of such a termination of the Voting Trust or permitted a transfer of voting securities to Hughes Tool Company. Mr. Davis confirms to me that Hughes Tool Company is prepared to accept complete responsibility for obtaining whatever action may be necessary by the Civil Aeronautics Board in connection with the termination of the Voting Trust.

*Defendant's Exhibit 11-Q.*

Mr. Tillinghast, in his letter to me, does not appear to be adequately informed as to the circumstances which caused the lending institutions to require the Voting Trust in connection with the 1960 financing. The lending institutions were prepared to advance credit to TWA without a voting trust, based upon a management clause comparable to that in the Indenture of Mortgage, at a time when Mr. Thomas was the chief executive officer of TWA. It was only after Mr. Thomas resigned as President, leaving TWA without a chief executive, that the lending institutions insisted upon a [19220] voting trust. At a time when TWA was without a president, the management clause, obviously, did not afford adequate protection to the lending institutions because the management clause protected the lending institutions only against a change in management adverse to their interests. At present, TWA has a President and Chairman of the Board who are presumably satisfactory to the lending institutions. Thus, there would seem to be no justification for assuming that the lending institutions would unreasonably refuse to consider a termination of the Voting Trust under circumstances in which both they and TWA would have a great deal more to gain by an acceptance of Proposal Number One than by a continuation of the Voting Trust. In this connection, it should be noted also that the Indenture of Mortgage itself recognizes the possibility of the termination of the Voting Trust by providing that the management clause is to come into effect automatically when the Voting Trust terminates.

Mr. Tillinghast points out, "Present indications are that substantial financing will be needed in the next few years, additional to the equity proposed to be added." In addition to the many advantages which one hundred million dollars of additional equity capital would provide to TWA and to the lending institutions, a termination of the Voting Trust would bring about definite advantages with respect

*Defendant's Exhibit 11-Q.*

to [19221] any needed additional debt financing. At the present time, a majority of the note holders have the absolute power to control a majority of the voting trustees, who in turn have the absolute power to control the Board of Directors. This situation unquestionably makes it difficult for the lending institutions now interested in TWA to negotiate the terms of additional debt financing without being subjected to the risks of self-dealing. A termination of the Voting Trust would eliminate that problem.

It is difficult for me as a director to understand what objection there may be from the point of view of TWA to an acceptance of Proposal Number One. I would appreciate, and even request, that each director give me whatever reasons he may have for opposing the acceptance of Proposal Number One. It seems to me that the Board of Directors in the discharge of its duties and obligations should adopt resolutions to the effect that it would be desirable for the Company to obtain on appropriate terms one hundred million dollars of additional equity capital without the payment of any underwriting fees or commissions; that from the point of view of the Company it would be desirable to accept Proposal Number One as submitted by Hughes Tool Company as set forth in its letter of June 10, 1961; that the President and Chairman of the Board of the Company be directed to communicate with [19222] appropriate representatives of the lending institutions presently holding the serial and sinking fund notes covered by the Indenture of Mortgage dated as of December 1, 1960 for the purpose of determining whether such lending institutions would consent to a termination of the Voting Trust in the event that the Company obtains a satisfactory guaranty of an additional one hundred million dollars of equity capital from its stockholders; and that the President and the Chairman of the Board be requested to submit a report in writing to the directors of the Company with

*Defendant's Exhibit 11-Q.*

respect to the efforts made with such lending institutions, the results of such efforts and the position or attitude taken by such lending institutions, together with their recommendation with respect to Proposal Number One and the basis for such recommendation.

Mr. Tillinghast also appears not to have been adequately informed with respect to what has transpired concerning the Convair 880's, which are available to TWA. I definitely advised Mr. Leslie, Senior Vice President—Finance and Treasurer, that TWA could obtain those 880's on the basis of Hughes Tool Company's costs determined in accordance with past practice and defined in the letter of June 9 by Hughes Tool Company to TWA. My discussions with Mr. Leslie specifically informed him of the price to TWA for said aircraft. There can be no question but that TWA formally advised Hughes [19223] Tool Company that it desired said aircraft and there is no basis whatever for any implication by Mr. Tillinghast that TWA is uninformed as to the price or basis on which those planes have been available to TWA. It is true that at one time Mr. Ben Sessel, at a Board meeting, suggested that an effort should be made to obtain those planes at a distress price. Such a suggestion was, of course, rejected by Hughes Tool Company.

It seems to me that it is of extreme importance that TWA advise Mr. Davis immediately that it is favorably disposed to an acceptance of Proposal Number One, and perhaps also of the other proposals, and that the President or other responsible officer of TWA take the necessary steps to obtain from him a reasonable extension of time of the offers contained in the letter of June 10 by Hughes Tool Company.

Very truly yours,

RAYMOND M. HOLLIDAY

**Defendant's Exhibit 11-R.**

[19224]

CHESTER C. DAVIS  
ROOM 3113  
ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.

PHONE WORTH 2-5220

June 21, 1961

Carl S. Rowe, Esq.  
Messrs. Chadbourne, Parke,  
Whiteside & Wolff  
25 Broadway  
New York 4, N. Y.

Dear Mr. Rowe:

This refers to your letter of June 20, 1961. You are in error if you are implying that I was suggesting an extension of time within which Hughes Tool Company could exercise its option to purchase the additional \$11,235,900 principal amount of debentures. I made it perfectly clear to you and to Mr. Mathers that the Hughes Tool Company was not seeking any extension of time. I was merely trying to discuss with you and Mr. Mathers mechanics which would not involve the granting of time to Hughes Tool Company but which would, nevertheless, give additional time to TWA if TWA felt that it needed additional time in order to consider Proposal Number Two. The record is quite clear in that respect. The suggestion of an escrow arrangement would have required the Hughes Tool Company to exercise its option to purchase the additional \$11,235,900 of deben-

*Defendant's Exhibit 11-R.*

tures and thereafter TWA at its option, not at the option of Hughes Tool Company, would have decided to accept or reject Proposal Number Two and concurrently received the money or cancelled the debentures issued depending on the decision of [19225] TWA with respect to Proposal Number Two.

At the closing, Mr. Mathers stated that a decision had been made by TWA. The closing proceeded, as the transcript of the closing shows, on the basis that TWA either had rejected Proposal Number Two or was unwilling to give itself additional time to consider the proposal.

I agree with you, however, that there would seem to be little purpose in continuing to correspond on the subject matter of your letter.

I am likewise sending copies of this letter to all those who received copies of prior correspondence on this subject.

Very truly yours,

CHESTER C. DAVIS

A-3287

**Defendant's Exhibit 11-S.**

[19236]

**CHESTER C. DAVIS  
ROOM 3113  
ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.**

**PHONE WORTH 2-5220**

**June 27, 1961**

**Mr. Ronald Duckworth, Secretary,  
Trans World Airlines, Inc.,  
380 Madison Avenue,  
New York 17, N. Y.**

**Dear Mr. Duckworth:**

I have received your letter of June 23, 1961 and the materials enclosed therewith. In your letter you state:

"In supplying you with the enclosed documents we do not intend to indicate that we believe we are obligated to furnish this information to you or to Hughes Tool Company.

We do not believe that under all the circumstances Hughes Tool Company is entitled to receive all reports presented to the Board of Directors of TWA and we are, therefore, not enclosing such reports."

Whether or not Hughes Tool Company is entitled to receive all reports presented to the Board of Directors of TWA, Mr. Raymond M. Holliday, a director of TWA, is entitled to receive such reports. In this connection, I am requesting on behalf of Mr. Raymond M. Holliday, in his

*Defendant's Exhibit 11-S.*

capacity as a director of TWA, the following documents in addition to those sent by you on June 23, 1961:

- (1) Copies of minutes of meetings of the Board of Directors of TWA held during 1960.
- 【19227】 (2) Copies of minutes of meetings of the Executive Committee of the Board of Directors of TWA held during 1960.
- (3) Copies of all reports presented to the directors or circulated at meetings of the Board during 1960 and 1961.

Very truly yours,

CHESTER C. DAVIS

By ARTHUR I. SETTLES

Defendant's Exhibit 11-T.

[19228]

CHESTER C. DAVIS  
ROOM 3113  
ONE TWENTY BROADWAY  
NEW YORK 5, N. Y.

PHONE WOrth 2-5220

June 30, 1961

Re TWA Voting Trust

Francis C. Reed, Esq.  
Messrs. Hughes, Hubbard, Blair & Reed  
One Wall Street  
New York 5, N. Y.

Dear Mr. Reed:

This letter is addressed to you as counsel for Mr. Breech and Mr. Olds as Voting Trustees, pursuant to their request that any matter which should be brought to their attention as Voting Trustees should be done through you as their counsel.

1. The management of TWA installed by the Voting Trustees appears to have developed a serious antagonism toward Hughes Tool Company and its owner, Mr. Howard Hughes. You appreciate, of course, the ownership interest of TWA is held by Hughes Tool Company, a Delaware corporation, and that there is no possible justification why such ownership interest should be ignored or adversely affected by reason of any personal antagonism which may exist on the part of any director or directors of TWA or any of its operating personnel toward Mr. Howard Hughes.

*Defendant's Exhibit 11-T.*

This antagonism becomes particularly serious when it reflects itself in a course of conduct obviously designed to oppose or frustrate any proposal, [19229] suggestion or request which is made by anyone on behalf of Hughes Tool Company. The recent course of conduct by TWA would seem to indicate that its management is primarily interested in creating a record to justify the rejection of any proposal or suggestion made by Hughes Tool Company, rather than making an effort to consider the matter in good faith on the merits. Under such circumstances, Hughes Tool Company can look only to the Voting Trustees to protect its interest in TWA, and hereby requests that the Voting Trustees inquire into the existence of any personal antagonism toward Mr. Hughes or the Hughes Tool Company by any director or individual in the management of TWA.

2. Hughes Tool Company has repeatedly requested, directly and through Mr. Holliday, information from TWA as to matters which vitally affect its ownership interest in TWA, and TWA has repeatedly refused to furnish pertinent information with respect to such matters.

For example, on May 25, 1961, requests were made to TWA, the Voting Trustees and their respective counsel for relevant papers, and particularly drafts of proposed agreements, relating to proposed additional financing by TWA referred to in the current Registration Statement of TWA. On May 29, 1961, I received a letter from TWA's counsel which advised me that no agreement concerning this proposed financing had yet been executed. [19230] This letter, however, completely ignored the request for drafts of documents which was made so that Hughes Tool Company could inform itself as to what was being proposed.

Similarly, on June 1, 1961, Mr. Holliday requested by telegram that he be advised of the exact status of the

*Defendant's Exhibit 11-T.*

proposed financing. Mr. Holliday informs me that he has not received such advice, and that no details with respect to this proposed financing have ever been furnished to him. In this connection you ought to note that the proposed minutes of the meeting of the Board of Directors of TWA held on May 17, 1961 state:

"Inasmuch as Mr. Raymond M. Holliday was not present, the Senior Vice President—Finance and Treasurer was requested to apprise Mr. Holliday of the details of the financing plan."

I am informed that neither the Senior Vice President—Finance and Treasurer nor any other representative of TWA has ever apprised Mr. Holliday of the details of the financing plan.

On June 4, 1961, I again requested TWA's counsel to submit to me or to Mr. Holliday the detailed terms of the proposed financing. On June 8, 1961 I was informed by counsel for TWA that it would be inappropriate for him to furnish to me the detailed terms of said financing. It is certainly known to TWA and its counsel that I am not only counsel for Hughes Tool Company but that I am also a vice president of the Company. It is likewise well known that Mr. Holliday is not only a director of TWA but also an officer of Hughes Tool Company.

On May 24, 1961, I requested certain documents from Mr. Duckworth, the secretary of TWA, including copies of all [19231] reports presented to the directors or circulated at meetings of the Board. On June 23, I received a reply from Mr. Duckworth stating:

"We do not believe that under all the circumstances Hughes Tool Company is entitled to receive all reports presented to the Board of Directors of TWA and we are, therefore, not enclosing such reports."

*Defendant's Exhibit 11-T.*

I do not know what circumstances Mr. Duckworth has in mind.

It is quite apparent that if Hughes Tool Company did not have its ownership interest in TWA in a voting trust, it would be able to obtain all the information which it seeks. The Voting Trustees holding the legal title to the beneficial interest of Hughes Tool Company in TWA have the power to bring about a responsiveness to the legitimate interest of Hughes Tool Company in TWA. The Voting Trustees, therefore, are hereby requested to take appropriate action to this end as well as to see to it that Hughes Tool Company and its authorized representatives obtain all information requested of TWA pertinent to the affairs of TWA.

3. TWA has violated the terms of the Hughes Financing and Subordination Agreement which is an integral part of the arrangement resulting in the creation of the Voting Trust. It is clear that under the terms of said Agreement Hughes Tool Company was entitled to have its \$100 million interim note of TWA [19232] refunded at the principal amount thereof plus accrued interest to the date of refunding. The closing with respect to the refunding of said interim note was to be held within three business days after the expiration of the subscription offer to stockholders of subordinated debentures. The closing was held in accordance with said Agreement on June 13, 1961. The fact that said refunding was to be accomplished with cash and with debentures does not change the obligation of TWA to Hughes Tool Company under Section 1.4 of said Agreement. The agreement by Hughes Tool Company to accept said debentures at the same price as offered to the public does not permit TWA to claim that Hughes Tool Company is obligated to accept said debentures at the offering price plus accrued interest. Said debentures are income debentures and do not carry a fixed interest obligation. It was

*Defendant's Exhibit 11-T.*

TWA and not Hughes Tool Company which elected to have the conditional interest on said debentures run from June 8, 1961. The amount of interest which TWA has failed to pay to Hughes Tool Company in accordance with said Agreement amounts to \$72,089.55. This matter was brought to the attention of the President of TWA and the claim has been rejected by counsel for TWA. It is the position of Hughes Tool Company that this rejection amounts to a deliberate violation by TWA of the terms of said Agreement. The Voting Trustees are hereby requested to take appropriate [19233] action to correct this default and violation of said Agreement and the arrangement relative to the creation of the Voting Trust.

4. By letter dated June 10, 1961, hand delivered June 12, 1961, Hughes Tool Company submitted three separate and distinct proposals to TWA, the Voting Trustees and the lending institutions having an interest in TWA. Two of these proposals by their terms have now expired. As stated in said letter, I was the representative of Hughes Tool Company authorized and empowered to discuss said proposals and to commit Hughes Tool Company with respect thereto. I remained continuously available for such discussions but no one communicated with me with respect to such proposals. I waited in the offices of TWA for an opportunity to appear before the Board of Directors of TWA, in the absence of Mr. Holliday who unexpectedly became ill and was unable to attend, and I was refused such an opportunity.

On June 16, 1961, the president of TWA wrote a letter to Mr. Holliday which was clearly intended to create a reason to justify a refusal by TWA to accept any of the proposals set forth in the letter of June 10. I received a copy of said letter when Mr. Holliday telegraphed TWA requesting that a copy be made available to me. Certain

*Defendant's Exhibit 11-T.*

aspects of the letter by Mr. Tillinghast were commented upon by Mr. Holliday in his letter [19234] of June 21, 1961 to the Board of Directors of TWA, a copy of which was forwarded to you as counsel for the Voting Trustees by letter dated June 21, 1961. The statement by Mr. Tillinghast that Hughes Tool Company had not advised TWA of the purchase price of the 13 Convair Model 990 aircraft, which were ordered by Hughes Tool Company from General Dynamics Corporation, and the implication that therefore TWA was not in a position to consider Proposal Number Three, is incredible.

I do not understand how TWA could have made an intelligent business decision to commit itself for additional Boeing aircraft without having obtained all available information as to the price of other available aircraft. If Mr. Tillinghast intended to imply that TWA did not know at what price Hughes Tool Company would make such aircraft available to TWA, such an implication cannot be justified even if it is assumed that Mr. Tillinghast has not had an opportunity to familiarize himself with respect to matters which occurred prior to his taking office. Proposal Number Three sets forth quite clearly the formula for determining the price for said 13 aircraft. Furthermore, at the request of counsel for TWA, Hughes Tool Company on June 19, 1961 furnished TWA with a copy of the purchase contract it has with Convair which sets forth the basic price for said aircraft. It is difficult to understand why it would be helpful to the president of [19235] TWA for us to make a dollars and cents computation which, of course, would change every day. It is inconceivable that the president of TWA is not aware that Mr. Bew, a TWA representative, is stationed at the Convair plant on a full time basis and that complete information as to the price of Convair aircraft and as to the payments made by Hughes Tool Company on account of said aircraft was available to TWA if,

*Defendant's Exhibit 11-T.*

in fact, the management of TWA was interested in the information.

With respect to Proposal Number Two, I realized that since the letter of June 10, 1961 was not delivered to the addressees until the morning of June 12, 1961, the management of TWA might find it difficult to make a decision on that proposal before the closing to be held on Tuesday, June 13, 1961. I refer you to my letter of June 13, 1961 as a partial indication of the effort made by Hughes Tool Company to discuss with TWA a procedure designed to give TWA additional time in which to consider the desirability of Proposal Number Two. I made a further effort at the closing held on Tuesday, June 13, 1961. TWA and its counsel reacted to those efforts by asserting that Hughes Tool Company was seeking to delay the closing and that TWA had no authority to delay the closing. The fact is, however, that the suggestions being made on behalf of Hughes Tool Company were not to delay any closing but rather to give TWA additional time, if the management [19236] of TWA felt that additional time was needed, for the purpose of considering Proposal Number Two.

It may be suggested by the management of TWA that the failure to react favorably to Proposal Number One is based upon an evaluation of the attitude which the lending institutions may have had toward that proposal. It is submitted that a management which in good faith desired to pursue the merits of Proposal Number One would have communicated with me and would have joined Hughes Tool Company in any communication with the lending institutions for the purpose of pointing out to them the many advantages to TWA as well as the lending institutions which the acceptance of the Proposal Number One would have had. I have never received a request for an extension of time for Proposal Number One. Presumably this is because the letter of June 10 clearly stated that any such re-

*Defendant's Exhibit 11-T.*

quest would have to be based upon a statement of a favorable attitude toward acceptance of the proposal.

5. Hughes Tool Company submits that immediate action by the Voting Trustees is required to protect its ownership interest in TWA. It further submits that the existence of the Voting Trust is not an indication or agreement on the part of Hughes Tool Company that its views on all matters affecting TWA are to be ignored, if not actively opposed. Hughes Tool Company [19237] is presently in a position of having to rely on the Voting Trustees for the protection of its equitable interests. The undersigned has been instructed by Hughes Tool Company to remain available to discuss the above and related matters with the Voting Trustees either with or without representatives of TWA and representatives of the lending institutions, if they will permit such a discussion.

Very truly yours,

CHESTER C. DAVIS

CAB Opinion and Order No. 3210,  
decided October 17, 1944

[The following document, which is not part of the Record in this case, has been printed in this Appendix at the instance of defendants.]

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[CAPTION]

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OPINION

BY THE BOARD:

Hughes Tool Company by application duly filed seeks approval by the Board "if such approval is deemed necessary" under section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition by it of control through stock ownership of Transcontinental & Western Air, Inc., hereinafter called TWA, an air carrier within the meaning of section 1(2) of the Act.<sup>1</sup> After notice, hearing was held and briefs have been filed. The Department of Justice was permitted to intervene. An examiner's report was issued recommending approval subject to the conditions that commercial transactions between TWA and Hughes Tool, or between TWA and any subsidiary or affiliate of Hughes Tool, be limited to aircraft parts or accessories, the item price of which complete does not exceed \$25, and to a total annual expenditure of \$10,000. Provision for fulfillment of certain existing contracts concerning the purchase of Lockheed aircraft and for further action in this proceeding when necessary also was recommended. The only exceptions filed were those of public counsel directed to the substance of the conditions. Oral argument was waived by all parties.

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<sup>1</sup> TWA holds certificates of public convenience and necessity under which it is authorized to perform air transportation over routes Nos. 2, 36, 37, 38, 44, 58, 61, and 67.

*CAB Opinion and Order, October 17, 1944.*

Under section 408 (a) (5) it is unlawful, unless approved by the Board, for any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever. By the language of section 408(b) the Board is required to grant such approval subject to such reasonable terms and conditions as are required in the circumstances unless it is found that the acquisition will not be consistent with the public interest. By the language of the application an issue as to our jurisdiction is raised; under the language of the Act the fundamental issue is whether the control sought to be held is or will be adverse to the public interest.

Hughes Tool is a Delaware Corporation, all the stock of which is owned by Howard R. Hughes. Its principal business, located at Houston, Tex., is and has been the manufacture of rock bits, tool joints, and high pressure valves for the oil-well-drilling industry. The company is a family enterprise, founded by the father of the present owner who was engaged in the oil industry. In its own field Hughes Tool has been and is highly successful. As of November 30, 1943, its capital and earned surplus aggregated nearly \$21,500,000. Its current assets aggregated more than \$22,000,000 against current liabilities of approximately \$10,770,000.

Howard R. Hughes is a well known aviator and aeronautical engineer. As a pilot he has been the winner of various trophies and is the holder of various speed records. As an aeronautical engineer he has designed or collaborated in the design and alteration of aircraft for speed tests and more lately for air transport.

*CAB Opinion and Order, October 17, 1944*

Hughes Tool first became interested in TWA in 1939 at the solicitation of the president of TWA, a personal friend of Howard R. Hughes. From time to time thereafter, either by purchase through brokers in the securities market or directly from the treasury of TWA, Hughes Tool acquired additional common stock of the air carrier until at the end of 1942 it was the owner of 440,050 shares, or 45.6 percent of the total shares outstanding. The total investment of Hughes Tool in the stock of TWA at the time of hearing in this proceeding exceeded \$5,505,000.

For the purpose of this proceeding applicant concedes that the stock now owned constitutes control of the carrier. There is very little room to doubt that for all practical purposes such control has existed since the end of 1940 at least when 42.1 percent was owned. Ownership of so great a proportion of outstanding stock, the remainder of which is dispersed among many owners, represents such a dominating influence in the affairs of the corporation that, in the absence of circumstances indicating the contrary, control, either affirmative or negative, must follow. Much smaller interests have been found so to result.\*

No individual holds or has held office in both Hughes Tool and TWA except for the employment in an advisory capacity by Hughes Tool of the president of TWA, Mr. Jack Frye.

Prior to 1939 the only activity of Hughes or of Hughes Tool associated with any phase of aviation was experimental and developmental work upon the privately owned and operated equipment of Mr. Hughes or the company.

\**Rochester Telephone Corporation v. United States*, 307 U.S. 125, 126 (1939).

*CAB Opinion and Order, October 17, 1944*

No activities of any character in commercial aviation existed. The first participation of Mr. Hughes in any phase of commercial aeronautics followed the acquisition of an interest in TWA. In the late spring and early summer of 1939, Messrs. Hughes and Frye collaborated in the preparation of specifications for a 4-motored airplane to be developed for use by TWA in commercial air transportation. They began negotiations with several aircraft manufacturing concerns regarding construction which resulted in an agreement between Hughes Tool and Lockheed Aircraft Corporation on June 30, 1939, before control of TWA by Hughes Tool was obtained. The contract called for the construction and delivery of five airplanes to be known as "Excalibur-A." The name later was changed to Constellation.

After various changes and modifications as to priorities, deliveries, and the number of aircraft to be purchased, this contract with the approval of Lockheed was assigned to TWA in 1942, Hughes Tool reserving an option to purchase through TWA 25 of the aircraft built under the Constellation specifications. The contract restricts the sale of such aircraft for use in domestic air transportation except by TWA during a certain future period. The aircraft are in process of manufacture and, by appropriate arrangement, are being sold and delivered at present as completed for military use, subject to an option by TWA and by Hughes Tool through TWA to reacquire 40 of them. The Constellation agreements were originally made by Hughes Tool with Lockheed for the benefit, and at the request, of TWA, and to evidence TWA's interest it was given the opportunity to be substituted for Hughes Tool as a direct contracting party. The obvious, if not the expressed, purpose of these arrangements was to give TWA the benefit of the

*CAB Opinion and Order, October 17, 1944*

credit and financial standing of Hughes Tool in a transaction involving substantial financial responsibility. As to the 25 airplanes subject to the option of Hughes Tool, the record indicates that these, if the option is exercised, will be held for resale and for experimental use.

Since the Constellation contracts were made, Hughes Tool, directly or through subsidiaries or affiliates created for that purpose, has expanded and diversified its industrial production by manufacture of military aircraft parts and accessories in furtherance of the war effort. There is no evidence of an intention to continue such activities after the war, or to engage in any phase of supply for commercial aviation. There is evidence to indicate only that Hughes Tool may continue developmental and experimental work in aviation.

The jurisdiction of the Board in the proceeding is questioned by the application when it asks approval "if such approval is deemed necessary". Under the section of the Act involved, there are three elements of jurisdiction: (1) there must be an acquisition of control; (2) the party sought to be controlled must be an air carrier; and (3) the acquirer must be engaged in a phase of aeronautics. As to the first two there is no doubt. There has been an acquisition of control, and TWA is an air carrier. As to none of the elements was any serious objection to the Board's jurisdiction interposed during the course of the proceeding subsequent to the filing of the application. The pertinent question is whether at the time that Hughes Tool acquired control of TWA it was engaged in a phase of aeronautics as contemplated by section 408 of the Act. Particularly significant in this regard is the fact that at that time Hughes Tool was obligated, and at the present time still holds valuable rights, to purchase a substantial fleet of aircraft,

*CAB Opinion and Order, October 17, 1944*

at least a part of which may be held for resale for commercial airline operation. It may under its contracts, if it has not already, become a dealer in such equipment and thus engage in a phase of aeronautics, which renders unlawful the acquisition of control of the air carrier without the consent of the Board. While some basis for a reasonable doubt in the mind of the applicant as to jurisdiction may have existed at the time control of TWA was obtained, we have none in view of the present plans of the applicant. Consummation of these plans is not essential to this conclusion.\*

Under the present and contemplated operations of Hughes Tool no adverse effect upon the public interest can be foreseen. Applicant is not now engaged in, and has no plans contemplating, production of aircraft, aircraft parts, or facilities for use in commercial air transportation. So far as concerns the possibility of TWA's acquiring from the applicant aircraft which the applicant may purchase under existing agreements, the likelihood that TWA might be forced, through the control exercised by Hughes Tool, to purchase more than the economic operations of TWA require is remote, in view of what might be referred to as the paternalistic attitude which Hughes Tool has exhibited up to the present time. We find that the continuation of this relationship between the applicant and the air carrier would not be inconsistent with the public interest. Nevertheless because of the possibilities resting therein, it is proper that in observing the obligations imposed upon us by the Act we insure against any temptation which may later come to the applicant to take advantage of the rela-

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\* *Pan American Airways Co. v. Civil Aeronautics Board*, 121 F. (2d) 810 (1941).

*CAB Opinion and Order, October 17, 1944*

tionship to its own profit and to the detriment of the public interest. This may be accomplished by granting approval subject to such reasonable conditions as will adequately protect the public interest in the future.

The Department of Justice urges that the restraint which has been placed upon the sale of Constellation type of aircraft for use in domestic air service, together with other facts in the case, be especially considered by the Board in determining the nature and scope of any order which may be entered. It urges further that the Board's approval, if granted, be based upon the fact that Hughes Tool is not now engaged in the manufacture of aircraft or aircraft parts for commercial use, and suggests that the Board reserve jurisdiction in the proceeding for the purpose of reconsideration in the event that this condition changes in the future.

Public counsel, while not opposing approval of the application herein, recommends the adoption of more stringent conditions. In summary, the conditions proposed by him would operate to forfeit the Board's approval of the acquisition of control in the event Hughes Tool or Hughes should engage in the manufacture, production, or disposition of aircraft or aircraft parts for use in interstate, overseas, or foreign air transportation, or in the event that Hughes should attempt to influence TWA with regard to the purchase, acceptance, or use by it of any aircraft or aircraft parts in the development or design of which he himself may have participated to a substantial degree.

Applicant opposes both the proposals of the Department of Justice and the conditions suggested by public counsel as harshly restrictive of its freedom of action and more burdensome than is necessary to satisfy the objectives of

*CAB Opinion and Order, October 17, 1944*

section 408. Applicant suggests that any conditions attached by the Board to its approval provide that if Hughes Tool should commence manufacturing aircraft or aircraft parts suitable for commercial use and that if TWA should desire to acquire such aircraft or aircraft parts, then TWA and Hughes Tool should be required to return to the Board for further hearing upon continuation of the relations between TWA and Hughes Tool.

The conditions proposed by public counsel are complicated and seem to be somewhat indefinite and difficult of enforcement. The object of any condition to the continued control of TWA by Hughes Tool inserted at this time in the authority granted by the Board should be to protect the public interest from any improper coercion of the air carrier by a controlling company on account of any interest which that controlling company may have in some other phase of aeronautics. This can be accomplished by a reasonable limit upon commercial transactions between the acquirer and the acquired which may be had without further consideration in this proceeding by the Board.

We are not concerned herein with questions revolving about the inhibition of section 408(b) of the Act against the creation of monopolies contrary to the public interest by the acquisition of control. Hughes Tool has no present interest in any other operating air carrier or any other enterprise having to do with any phase of aeronautics except as already stated.

On the basis of the foregoing considerations and all of the facts of record, we find that acquisition of control of TWA by Hughes Tool through the purchase and ownership of a stock interest therein will not be inconsistent with the public interest so long as commercial transactions be-

*CAB Opinion and Order, October 17, 1944*

tween them or between TWA and any affiliate or subsidiary of Hughes Tool are limited to transactions involving complete items of property, the price of which does not exceed \$200 each, with the further limitation that the total annual expenditure involved in such commercial transactions by either party shall not exceed \$10,000. As a further condition of our approval herein TWA should furnish with its annual report each year, so long as Hughes Tool retains the control herein approved, a statement showing the total cash price of all commercial transactions between it and Hughes Tool and/or any affiliate or subsidiary thereof, the maximum and minimum item price, the number of such transactions, and the general nature of commodities involved. These restrictions and requirements, however, will not be made to affect or apply to the existing contractual right of the applicant to reacquire Constellation aircraft through TWA.

An appropriate order will be entered.

Pogue, Chairman, Warner, Branch, Ryan, and Lee, Members of the Board, concurred in the above opinion.

**Order**

Hughes Tool Company, an industrial corporation, having filed an application requesting that the Board approve the acquisition of control, by the purchase of common stock, of Transcontinental & Western Air, Inc.; under section 408 of the Civil Aeronautics Act of 1938, as amended, and a full public hearing having been held thereon, and the Board, upon consideration of the record in this proceeding, having issued its opinion containing its findings, conclusions and decision, which is attached hereto and made a part hereof,

*CAB Opinion and Order, October 17, 1944*

**It is Ordered,** That the application of Hughes Tool Company be and it is hereby approved, subject to the following conditions:

1. That said approval shall be effective so long as commercial transactions between TWA and Hughes Tool Company and between TWA and any affiliate or subsidiary of Hughes Tool Company are limited to transactions involving complete items of property, the price of which does not exceed \$200 each, with the further limitation that the total annual expenditure involved in such commercial transactions by either party shall not exceed \$10,000;
2. That TWA shall furnish with its annual report to the Board a supplement thereto showing the total of all cash transactions between TWA and Hughes Tool Company and/or any affiliate or subsidiary thereof, the number of such transactions, the maximum and minimum price of items of property, and the general nature of the commodities involved; and
3. That nothing herein shall restrict or affect the right of purchase by Hughes Tool Company through TWA of aircraft, the purchase of which is provided for in existing agreements between them.

A-3307

**Order Modifying Order Approving Acquisition  
of Control**

[3910]

Orders  
Serial Number 4437

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.,  
on the 26th day of January, 1946

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**[CAPTION]** Docket No. 1182

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**ORDER MODIFYING ORDER APPROVING ACQUISITION OF CONTROL**

A petition in the form of a letter dated November 14, 1945, having been filed on behalf of Hughes Tool Company, an industrial corporation, for modification of the Board's Order, Serial No. 3210, issued October 17, 1944, in Docket No. 1182, in respect of the conditions attached to the Board's approval of the acquisition of control by Hughes Tool Company of Transcontinental and Western Air, Inc.; and

The Board, acting pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205(a), 408 and 1005(d) thereof, and finding that the modification of the aforesaid Order in the manner requested would be consistent with the public interest;

It Is ORDERED That the Board's Order, Serial No. 3210, issued October 17, 1944, in Docket No. 1182, be and it is hereby modified by striking paragraph numbered "3" of said Order and substituting therefor the following:

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"3. That the terms of this order shall not restrict or affect the right of purchase by Hughes Tool Company through TWA of

(a) aircraft, the purchase of which is provided for in existing agreements between them; [3911] (b) transportation from TWA at regularly published rates;

(c) aviation fuel from TWA at prices charged by TWA to other purchasers;

(d) repairs, modifications, maintenance and overhaul service, including parts and materials necessary therewith, from TWA at prices charged by TWA to other purchasers."

By the Civil Aeronautics Board:

/s/ FRED A. TOOMBS

Fred A. Toombs

Secretary

(SEAL)

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*Order Modifying Order Approving Acquisition*

[3912]

Orders  
Serial Number E-922

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.,  
on the 29th day of October, 1947

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[CAPTION] Docket No. 1182

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**ORDER MODIFYING ORDER APPROVING ACQUISITION**

A motion having been filed by Hughes Tool Company for an order modifying Order Serial No. 3210 issued October 17, 1944 in Docket No. 1182, as amended by Order Serial No. 4437 issued January 26, 1946, so as to permit Hughes Tool Company to sell to Transcontinental & Western Air, Inc. at cost to Hughes Tool Company devices known as "Hughes Airline Radar Units"; and

The Board, acting pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205(a), 408 and 1005(d) thereof, and finding that the modification of Order Serial No. 3210, as amended by Order Serial No. 4437, hereinafter provided for is just and reasonable and is in the public interest;

If It Is ORDERED:

That Order Serial No. 3210 issued October 17, 1944, as amended by Order Serial No. 4437 issued January 26, 1946, be and it hereby is modified by adding thereto the following:

[3913] "4. That the terms of this order shall not restrict the right of Hughes Tool Company to sell to

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TWA or the right of TWA to purchase from Hughes Tool Company devices known as "Hughes Airline Radar Units" in such quantities as TWA may wish to purchase; *Provided* that the sale price of such "Hughes Airline Radar Units" to TWA shall not exceed the lowest of the following: (a) the cost of such units to Hughes Tool Company; (b) the price at which similar sales of such equipment are made at or about the same time by Hughes Tool Company to any other air line; and *Provided* further that all sales of "Hughes Airline Radar Units" shall be reported to the Board in the manner provided in paragraph 2 of this order."

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN  
M. C. Mulligan  
Secretary

(~~SEAL~~)

**CAB Opinion and Order No. E-1735, decided  
June 30, 1948**

[The following document, which is not part of the Record of this case, has been printed in this Appendix at the instance of defendants.]

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[CAPTION]

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**OPINION**

**BY THE BOARD:**

This proceeding arises out of an order of the Board<sup>1</sup> instituting an investigation into a letter agreement between Hughes Tool Company (Toolco) and Transcontinental & Western Air, Inc. (TWA), dated January 8, 1947, and accepted by the board of directors of TWA on January 9, 1947. The letter agreement provides, among other things, for certain loans by Toolco to TWA, in exchange for the latter's 2½-percent notes, convertible at Toolco's option into common stock of TWA, and for the reconstitution, upon the occurrence of certain events, of the board of directors of TWA. We instituted this proceeding to determine whether the letter agreement or any arrangement or action related thereto, or any change in the activities of Toolco in the field of aeronautics since October 17, 1944,<sup>2</sup> has resulted

<sup>1</sup> Order serial No. E-289, dated February 7, 1947.

<sup>2</sup> This is the date of the Board's approval of the original acquisition of control by Hughes Tool Company of TWA under section 408 of the Act, Docket No. 1182, *Transcontinental & W. A., Control by Hughes Tool*, 6 C. A. B. 153. The Board, however, placed several terms and conditions in its order of approval which in effect limit the right of Toolco to engage with TWA in commercial transactions involving aeronautical property. Certain clarifications were later made in this order of approval.

*CAB Opinion and Order, June 30, 1948.*

or will result in an acquisition of control of TWA for which its approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended; to determine whether such acquisition of control, if any, is consistent with the public interest and fulfills the conditions of said section 408; and for the purpose of entering any such order or taking such further action as may be appropriate pursuant to the provisions of the Act.

Under section 408 (a) (5) of the Act, it is unlawful, unless approved by the Board, for any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to acquire control of an air carrier in any manner whatsoever. By the provisions of section 408 (b) of the Act the Board is required to grant such approval upon such terms and conditions as it finds just and reasonable where that acquisition is found not to be inconsistent with the public interest, or not to violate other conditions laid down in that section.

On May 15, 1947, respondents Toolco and TWA filed a joint motion for an order to hear and determine separately the jurisdictional issue under section 408 (a) (5) of the Act before hearing and determining the issues under section 408 (b). Except for denying that portion of the motion of respondents with respect to their request for a limitation of the evidence to be adduced at the preliminary hearing, the motion was granted by order of the Board.\* Hearings were held, pursuant to this latter order, before Examiner Edward T. Stodola in Los Angeles, Calif., on September 10 and 11, 1947.

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\* Order serial No. E-657, dated June 18, 1947.

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In a report served on January 30, 1948, the examiner concluded that there has been no change in the aeronautical activities of Toolco since the date of our original approval of control in Docket No. 1182 for which further approval is required, but recommended that we find that the transactions evidenced by the letter agreement have resulted in a further acquisition of control by Toolco over TWA, requiring our approval under section 408 of the Act. He further recommended that a second hearing be held to determine whether such further or additional acquisition of control meets the requirements of section 408 (b) of the Act. Exceptions to said report and briefs in support thereof have been filed by respondents Toolco and TWA and oral argument has been heard by the Board.

We first address ourselves to the problem whether any change in the activities of Toolco in the field of aeronautics since October 17, 1944, has affected or altered the character of the control approved in Docket No. 1182. It is clear that a substantial change in the activities of Toolco in the field of aeronautics would result in a transaction subject to the Board's jurisdiction under section 408 by reason of the fact that the character and propriety of control originally approved might be altered or changed as a result thereof.

The Aircraft Division of Toolco, which is located in Culver City, Calif., is described in the record as "a large scale experimental plant." Its principal activity at the present time consists of experimental work on aircraft accessories and armament for the Army and Navy. Some of these experiments might result in the development of products which could be dedicated to commercial airline operations. The Aircraft Division of Toolco has also developed a device which works on the radar principle and is capable of warn-

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ing an aircraft pilot of his proximity to any obstruction. These devices are now being sold by Toolco on a nonprofit basis to all commercial airlines that wish them. The sale of the radar device will also be made to TWA at cost. Purchase orders from that carrier have been received by Toolco, which recite that the purchases would be made subject to the terms and conditions of the Board's order approving control by Toolco as amended in Docket No. 1182.<sup>4</sup> Further aeronautical activities of Toolco consist of conversion work on the 14 C-47 aircraft, which represent Army surplus equipment acquired by Toolco for resale since January 1947.

The present aeronautical activities of Toolco clearly establish it as a person engaged in a "phase of aeronautics" within the meaning of section 408 (a) (5) of the Act. However, the record shows that there has been no substantial change in Toolco's operations in the field of aeronautics since the original order of approval of October 17, 1944, which would require our further consideration under section 408 of Toolco's control of TWA.

There is also before us, however, the question whether the transactions evidenced by the letter agreement of January 8, 1947, have resulted or will result in an acquisition of control of the carrier for which Board approval is required pursuant to the provisions of section 408 of the Act.

Toolco has never held more than 46.1 percent of the outstanding stock of TWA. The application for the original approval of control in Docket No. 1182 recited that Toolco owned 45.6 percent of 965,083 shares of TWA stock then

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<sup>4</sup> On October 29, 1947, the Board, by order serial No. E-922, further modified the order approving the acquisition in Docket No. 1182 so as to permit Toolco to sell the radar warning units to TWA.

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outstanding. At the time of the hearing herein it held 452,100 of the 985,984 shares of TWA stock issued and outstanding, again representing approximately a 45-percent stock interest in the carrier. The remaining stock holdings in the carrier are widely dispersed.

The letter agreement had its genesis in the failure of TWA and its principal stockholder, Toolco, to agree on a program of financing the carrier's capital needs after the termination of the war. As early as January 1945 there were some preliminary discussions between the management of TWA and the executive vice president of Toolco with respect to financing for the carrier. Both TWA and Toolco then recognized that any program of large-scale financing for the carrier ought to include a substantial measure of equity financing. Efforts directed toward agreement on a plan for additional financing, however, reflected a gradual but ever widening rift between the TWA management and Toolco with respect to operating plans and policies for the carrier.

Meanwhile, during November 1945 a program of debt financing was entered into with the Equitable Life Assurance Society of the United States, whereby Equitable purchased an issue of 3-percent sinking-fund debentures from the carrier in the principal amount of 30 million dollars. Then, in May 1946, Equitable purchased an issue of 2 1/4-percent sinking fund debentures in the amount of 10 million dollars from TWA. Sinking-fund payments of 4 million dollars annually were required under the two series of debenture loans. The Equitable loan was an equipment loan in that 80 percent of the proceeds thereof were to be used for the purchase of equipment.

There is nothing in the record to indicate that a successful flotation of stock in large volume could not have been

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accomplished at any time during 1945 and during the greater part of 1946. Several plans for financing were explored during this period, but differences of opinion between the management of the carrier and its principal stockholder delayed favorable action on a definite program. In the end nothing was done until an alleged unfavorable turn in the security market about September 1946 made any large-scale equity financing difficult of promotion.

Toward the end of 1946 TWA's financial condition had become critical. Efforts at additional financing had failed. The record shows that in the closing months of 1946 the carrier could not attract any capital and was facing bankruptcy. The record further shows that Toolco was willing to be of financial assistance but was unwilling to furnish additional money to save the carrier unless it had further control of the spending thereof. The letter agreement of January 8 finally became the means chosen to reorganize the carrier and to save it from bankruptcy.

The agreement provides, among other things, for (1) a loan by Toolco to TWA in the amount of 10 million dollars and the issuance to Toolco of 2½-percent notes due June 2, 1956, for such loan with an option to convert said notes into common stock of TWA; (2) diligent endeavor on the part of Toolco to arrange a 40-million-dollar loan of credit with the Reconstruction Finance Corporation;<sup>6</sup> (3) a rearrangement of the Equitable financing under the 40-million-dollar debenture loan; (4) a reconstitution of the

<sup>6</sup> The loan contemplated was also to be an equipment loan and was not being pressed immediately after the acceptance of the letter agreement because it was then concluded that the carrier did not need additional equipment. However, attempts were being made about the time of the hearing herein to secure a general credit from the RFC in the reduced amount of 10 million dollars.

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board of directors of TWA so that the majority thereof will be nominees of Toolco; and (5) a requirement that no change be made in the bylaws of the carrier without the written consent of Toolco until all the changes contemplated by the foregoing provisions have been made.

The notes may be converted by Toolco at any time prior to maturity into common stock of TWA at a price per share which shall be the average of the prices at which the last sale of such stock was made on the New York Stock Exchange on each of the last 10 business days preceding receipt by the carrier of notice of exercise of the option to convert, unless such average shall be less than \$5 per share (the par value of the stock), in which event the conversion price shall be \$5. TWA, however, may require Toolco to convert, at a price per share to be calculated by the same method, by notifying Toolco to this effect on January 1, 1950.

To provide for the possible conversion, 2,000,000 shares of TWA common stock at \$5 par value have been authorized. Thus, if Toolco were to acquire the entire 2,000,000 shares authorized at the minimum conversion price, it would then be owner of about 80 percent of the common

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\* Prior to January 8, 1947, all directors of the carrier were nominees of Mr. Jack Frye, then president of TWA. Immediately after the consummation of the letter agreement, the board of directors of TWA was reconstituted and 13 directors were added to the original 11 then on the board. The directors added were all nominees of Toolco. The regular annual stockholders' meeting of the carrier was held on April 24, 1947. The TWA board was then reduced from 24 to 14. The present board is dominated by Toolco nominees and there exists little probability of conflict over Toolco's policy for TWA. Moreover, the bylaws of the carrier were amended at said annual stockholders' meeting to make the new board more responsive to the stockholders' wishes.

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stock of TWA issued and outstanding.<sup>7</sup> It should be noted that stock in TWA carries with it no preemptive rights, so that upon the issuance of additional shares present stockholders, other than Toolco, may not require that they be permitted to subscribe to shares proportionate to their present holdings in the carrier. Accordingly, the letter agreement gives Toolco an inalienable right to acquire up to a possible 80 percent of the stock in TWA. It should also be noted that the convertible notes given under the letter agreement further provide that TWA may not make payments on Toolco's loan before payment in full is made on the 40-million-dollar debenture loan held by Equitable, and any advances made to the carrier by the RFC.

On December 26, 1947, Toolco, in further agreement with TWA, waived all its rights to require payment of the aforementioned notes in money or in any form other than stock in the carrier in accordance with the conversion provisions of such notes. It was specified, among other things, that such waiver does not constitute an election by Toolco to convert said notes into stock as of the date of waiver. In consideration of this waiver, TWA agreed that it would enter into no final contract with the Lockheed Aircraft Corporation pursuant to negotiations then pending for the purchase of a number of Constellation Model 749 aircraft and spare parts, unless Toolco should have approved such contract of purchase in full. Such approval was subsequently given by Toolco on the condition that Lockheed Aviation Corporation enter into an agreement with TWA

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<sup>7</sup> If Toolco converted at \$15, the closing price of TWA stock on June 18, 1948, the date of the writing of this opinion, it would then own approximately 67 percent of all TWA stock outstanding.

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requiring performance by Lockheed of certain modification work without cost to TWA. Toolco consented to subordinate the repayment due it in money under the convertible notes in order to assist the carrier in financing the purchase of the Lockheed equipment through a group of 14 lending banks. Under the circumstances, however, eventual conversion of the notes into stock cannot be avoided, save by bankruptcy of the carrier.

Under the section of the Civil Aeronautics Act involved, we are directed to assert jurisdiction over the acquisition, to the extent made necessary by the facts of record, by any person engaged in a phase of aeronautics of the control of an air carrier through the purchase of the latter's stock, or in any other manner whatsoever. Once the necessary jurisdictional elements are present, our action under the Act is mandatory. That TWA is an air carrier and that Toolco is a person engaged in a phase of aeronautics within the meaning of section 408 are not questioned. Since we have previously approved the acquisition of control of TWA by Toolco, the issue we face here is whether there has been a further or additional acquisition of control over the carrier within the meaning of the statute.

This question is a relatively simple one. It turns upon two basic problems. First we must decide whether, in view of our ratification of the relationship between Toolco and TWA on October 17, 1944, there can be another or additional acquisition of control as a matter of law; the second problem to be determined is whether, as a matter of fact, an additional acquisition of control is present in this proceeding.

That there can be more than one acquisition of control over an air carrier, as a matter of law, appears to be beyond

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doubt. We have not heretofore had occasion to render decision upon the question whether, once an acquisition of control of an air carrier has been approved pursuant to section 408, subsequent transactions can result in a new or additional acquisition of control which must also be approved under that section. However, in the *Northeast* case\* we took the position that the existence of control of an air carrier would not prevent us from asserting jurisdiction in a case where the extent or effectiveness of control was later increased.

The Interstate Commerce Commission has likewise, under an almost identical statute,\* rendered decisions on the issue of the Commission's jurisdiction in cases where varying degrees of control already existed, and where further control was sought to be established.<sup>\*\*</sup> It has consistently taken the position that the creation of a substantive measure of additional control, through stock purchase or otherwise, in

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\* *Railroad Control of Northeast Airlines*, 4 C. A. B. 379 (1943).

\*\* Section 408 of the Civil Aeronautics Act was borrowed, almost word for word, from section 213 of the Motor Carrier Act of 1935 (49 Stat. 555). Section 213 on the other hand, was patterned after paragraphs (4) and (5) of the Interstate Commerce Act, of which the Motor Carrier Act became Part II. Section 213 was repealed by the Transportation Act of 1940 (54 Stat. 905). This latter Act amended section 5 to add substantially the provisions of the repealed section 213.

\*\* Accordingly, persuasive weight may be given herein to decisions of the Commission construing the word "control" and dealing with the concept of acquisition of control or changes in the extent or effectiveness thereof in relationships comparable to that before us in the instant proceeding. *Acquisition of Marquette by TWA—Supplemental Opinion*, 2 C. A. B. 409 (1940); *American President Lines et al., Petition*, 7 C. A. B. 799, 811 (1947); Cf. U. S. Nat. Co. v. *Cunard S. S. Co.*, 284 U. S. 474, 480-481 (1932).

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an acquiring stockholder, whose preexisting control of a carrier was for one reason or another legally incomplete, represents an acquisition subject to the approval of the Commission under the Interstate Commerce Act.<sup>11</sup>

Section 408 of the Act does not define the "control" to be approved thereunder, nor does the statute specify the completeness of the acquisition over which we may assume jurisdiction. We have consistently held that the term "control" is not an absolute or unqualified concept, but rather one which may import various meanings and apply to and cover a variety of situations.<sup>12</sup> On the part of the person exercising control, the term implies the existence of a right or power to direct or dominate, whether actually exercised or existing in potential use. As the right or power to direct or dominate the affairs of a corporation, control cannot be held to constitute a unitary concept, which, once approved, covers every degree of direction or domination of the controlled carrier. Obviously the Act confers no jurisdiction where what is sought to be approved constitutes less than control. But it is just as obvious that there are many de-

<sup>11</sup> *Control of Big Four by New York Central*, 72 I. C. C. 96 (1922); *Control of C., St. P., M. & O. Ry.*, 105 I. C. C. 543 (1926); *Poria & E. Ry. Co., Control*, 236 I. C. C. 749 (1940); *Black Hills Stage, Inc., Purchase—Black Hills Transp.*, 25 M. C. C. 487 (1940); *Hogshire-Control-N. B. & C. Motor Lines, Inc.*, 35 M. C. C. 520 (1939); *Wheeling & Lake Erie Ry. Co., Control*, 267 I. C. C. 411 (1947); *Joliet & Chicago R. Co. & Louisiana & Missouri River R. Co., Control*, 267 I. C. C. 827 (1947); and *Dover & Rockway R. Co., Control*, 267 I. C. C. 828 (1948).

<sup>12</sup> *Railroad Control of Northeast Airlines, supra*; *Pan Am. Airways, Inc., Aerovias de Guatemala*, 4 C. A. B. 403 (1943); *Pan Am. Airways, Inc., Aeronaves de Mexico*, 4 C. A. B. 494 (1943); and *Pan Am. Airways, Acquisition of China National*, 6 C. A. B. 162 (1944).

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grees of control, and that approval may be granted under the statute to an acquisition under which the controlling person may direct or dominate many but not all of the affairs of the controlled corporation. In the case of control acquired through the purchase of stock, the extent of control existing, absenting other relationships indicating influence on the part of the acquirer over the controlled company, will depend upon the specific quantum of stock interest held by the acquirer and the rights and privileges that attach thereto. In brief, a controlling person owning a substantial portion of the controlled carrier's stock may have acquired an actual or *de facto* control but not the full and complete legal control which flows from ownership of all, or substantially all, of the issued and outstanding stock of the carrier.

Full legal control of a corporation obviously implies power to dictate the complete corporate activities of the corporation. Both Toolco and TWA are Delaware corporations. Section 26 of the Delaware Corporation Law<sup>13</sup> provides that a corporation may amend its certificate of incorporation by adding to or decreasing its corporate powers, or by substituting certain powers and purposes in place of those already present therein, or by increasing or decreasing its authorized capital stock or reclassifying it, or by making any other change or alteration in its certificate that may be desired. Every such amendment, however, requires the affirmative vote of a majority of the stock of that corporation entitled to vote on such amendment. Under

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<sup>13</sup> Revised Code of Delaware 1935, chap. 65, art. 1, par. 2058, sec. 26.

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section 39 of the Delaware Corporation Law,<sup>14</sup> proceedings for dissolution of a corporation must be approved by two-thirds of the voting stock of said corporation, and under section 59 of that law<sup>15</sup> an agreement of merger between a Delaware corporation and another such corporation, or a corporation of any State, must, at least insofar as the Delaware corporation is concerned, have the approval of two-thirds of the total number of shares of its capital stock.

Toolco's 45-percent stock interest in TWA has given it sufficient power to determine many but not all of the corporate activities of the carrier. It now has sufficient power and influence to control the board of directors of TWA and thereby to manage and direct the usual day-to-day business and financial affairs of the airline. But unless assisted by other stockholders in the carrier, Toolco would, as the recital of the applicable Delaware law indicates, need at least a numerical majority to satisfy the provisions of the Delaware law with respect to amending the certificate of incorporation of the carrier, and at least a two-thirds stock interest in the carrier to take action with respect to such vital matters as merger, consolidation, or dissolution of TWA.

The Board's jurisdiction is challenged by respondents on the ground that the transactions represented by the letter agreement have not resulted, and could not result, in an

<sup>14</sup> Revised Code of Delaware 1945, chap. 65, art. 1, par. 2071, sec. 39, as amended by 45 Laws of Delaware (1945) chap. 157, sec. 3, pp. 596-598.

<sup>15</sup> Revised Code of Delaware 1935, chap. 65, art. 1, par. 2091, sec. 59, as amended by 43 Laws of Delaware (1941) chap. 132, sec. 12, pp. 458-461.

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additional or further acquisition of control either as a matter of law or as a matter of fact.

Respondents argue that the Board, in October 1944, in Docket No. 1182, approved the highest possible degree of control and that our decision in the original control proceeding is a complete and definitive answer to the question before us here. They point to the Board's final order in that proceeding, approving "the acquisition of control, by the purchase of common stock, of Transcontinental & Western Air, Inc.," and contend that the effect of the Board's order was to permit Toolco to acquire TWA stock without any limitation as to the amount of stock, time of purchase, or any other factor. In other words, it is argued that the Board's order in Docket No. 1182 originally approving control contemplates and covers the very type of transactions represented by the letter agreement of January 8, 1947. Accordingly, it is urged that the language of the Board's order in Docket No. 1182, approved full and complete control of TWA by Toolco and thus forecloses the present issue as a matter of law.

Perhaps an essential approach to an interpretation of the effect of the order in Docket No. 1182 is a recognition of the fact that our decisions in previous control proceedings, whether with respect to the issue of our jurisdiction, or the question of the consistency of the control acquired with the public interest, clearly relate to the quantum of control represented by the extent of ownership of stock in the controlled company at the time of the application.<sup>11</sup>

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<sup>11</sup> See, for example, *Railroad Control of Northeast Airlines*, *supra*; *Pan Am. Airways, Inc., Aerovias de Guatemala*, *supra*; *Pan Am. Airways, Inc., Aeronaves de Mexico*, *supra*; *Western A. L., Acquisition of Inland A. L.*, 4 C. A. B. 654 (1944); *Pan Am.*

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In general, the important issue of jurisdiction presented for our determination in acquisition proceedings is whether or not the extent of ownership and influence established to exist in the acquirer has resulted or will result in "control" of the air carrier involved. In cases where the record has supported our assertion of jurisdiction, our decisions indicate whether the degree of domination or influence shown to exist in the acquirer was consistent with the public interest and met the requirements of section 408 (b).

To determine the precise scope of the approval we granted in Docket No. 1182, however, it is necessary to reexamine our final order therein and to interpret its purpose. It is elementary, of course, that in interpreting an administrative order it is necessary to read and construe the order and the accompanying opinion as a whole.

The opinion upon which the order is based was clearly couched in terms of factors then present and our order in that proceeding is based upon findings relating to the degree of control represented by the extent of the stock interest existing in the control carrier at the time of the Board's original order of approval. Our opinion in Docket No. 1182 recites that "control" for the purpose of that proceeding was stipulated, and the principal issue facing the Board for decision was whether Toolco, the acquirer, was a person engaged in a phase of aeronautics, within the meaning of section 408 (a) (5) of the Act. Finding that to be the fact, and together with the facts that the controlled corporation was an air carrier and that "control" was stip-

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*Airways, Acquisition of China National, supra; American Air., Control of American Export Air., 6 C. A. B. 371 (1945); National-Caribbean-Atlantic Control Case, 6 C. A. B. 671 (1946); and American Air., Control of Mid-Continent Air., 7 C. A. B. 365 (1946).*

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ulated, we approved the relationship subject to certain limitations relating to commercial transactions between Toolco and TWA. It is evident that in passing upon Toolco's original application for approval of its acquisition of control of the carrier we did not concern ourselves with more than the specific degree of control involved in the record before us. We stated:

For the purpose of this proceeding applicant (Toolco) concedes that the stock *now owned* constitutes control of the carrier. There is very little room to doubt that for all practical purposes such control has existed since the end of 1940 at least when 42.1 percent was owned. Ownership of so great a proportion of outstanding stock, the remainder of which is dispersed among many owners, represents such a dominating influence in the affairs of the corporation that, in the absence of circumstances indicating the contrary, control, either affirmative or negative, must follow. Much smaller interests have been found so to result (*supra*, p. 154; emphasis supplied).

Our opinion also set forth Toolco's history of stock ownership in TWA from 1939 to the date of the opinion, when Toolco owned about 45 percent of TWA's shares then outstanding. Under the provisions of section 408, we were then directed to determine whether Toolco's control of TWA, stemming from the stock interest it then had in the carrier, was consistent with the public interest. On that question we then found as follows:

\* \* \* we find that acquisition of control of TWA by Hughes Tool through the purchase and ownership of

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*a stock interest* therein will not be inconsistent with the public interest \* \* \* (*supra*, p. 157; emphasis supplied).

It should be clear from the foregoing that we did not intend to, and did not, grant a blanket, unlimited, *in futuro* approval of the relationship between Toolco and TWA. All parties to the original proceeding concerned themselves with the control relationship then present. In construing our own order here, we have searched the contentions made by the parties to the original control proceeding in an effort to discover matters which would demonstrate a possible intent on our part to make the approval granted in Docket No. 1182 an unlimited one. But the record in that proceeding is clear to the effect that issue of a blanket *in futuro* approval was not raised or urged upon the Board. While the Board could have approved, upon an appropriate finding, more than that degree of control submitted by the applicant in the original control proceeding, such an unlimited approval would have been made in clear, unmistakable language. A reading of our opinion and order, in the light of the facts of record in that proceeding, definitely fails to show that such approval was either contemplated or granted. Indeed, it would be unreasonable to assume that our approval then of Toolco's 45-percent stock interest in TWA would forever constitute an unlimited ratification of any and all future acquisitions of ownership interest in the carrier.

In view of the foregoing, we do not believe that our order in Docket No. 1182 approved more than the specific quantum and degree of control represented by the 45-percent stock interest then owned by Toolco. That order shows

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quite plainly that the Board was then dealing in terms of the then existing situation. In other words, the Board there approved a preexisting control relationship on a record which neither proposed nor showed prospects of a further acquisition of ownership interest in the carrier on the part of the acquirer.

Respondents insist that the mere existence of the words in our order approving "the acquisition of control, by the purchase of common stock" is sufficient to dispose of the issue of the type of approval we granted. But the words "by the purchase of stock" cannot be held to be words of art, importing a blanket, technical meaning and covering in umbrella-like fashion all subsequent transactions under which the acquirer may have obtained an additional substantive interest in the carrier. Rather the words "by the purchase of stock" may well be regarded, without impropriety, particularly when read in the light of the opinion supporting their use, as mere words of description, setting forth the manner in which control was acquired. It bears repeating that there is no support in either the record or the opinion for the contention that the words in question were intended as an expression of blanket approval of the relationship under consideration.<sup>17</sup>

Respondents further contend that, even if the letter agreement could result in a further acquisition as a matter

<sup>17</sup> The Interstate Commerce Commission in the *Louisiana & Missouri* control case, *suprs*, approved "further control" by one railway carrier over another as a jurisdictional acquisition within the meaning of section 5 (2) of the Interstate Commerce Act after it had previously permitted the acquirer to acquire "control through stock ownership", a phrase almost identical to that used in Docket No. 1182, which respondents claim approves control without limitation.

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of law, the record in this proceeding fails to establish an additional acquisition as a matter of fact because (1) Toolco has not yet exercised its option under the letter agreement to acquire any greater stock interest in the carrier, and (2) Toolco at all times has exercised, and without converting the notes into stock can continue to exercise, complete legal control of the carrier.

We find that the right on the part of Toolco to acquire the additional TWA stock represented by the conversion feature of the notes has resulted in an increased measure of substantive control over the carrier and its corporate affairs. It would not appear that the actual exercise of the conversion privilege by Toolco is necessary to establish our jurisdiction. The existence of the nondefeasible conversion right, under agreements whereby TWA can accelerate but not avoid the conversion, substantially increases Toolco's power over the carrier and this power is of such a nature as to require our approval. Under Delaware law Toolco, with a majority stock ownership in TWA, alone and on its own initiative, can perform such important corporate acts as amending TWA's certificate of incorporation by adding to or decreasing its corporate powers, or by substituting certain powers and purposes in place of those already present therein, or by increasing its authorized capital stock or reclassifying it, or by making other changes or alterations in said certificate. Moreover, a two-thirds common-stock interest in TWA would enable Toolco, for the first time and using its sole voting power, to satisfy the provisions of Delaware law with respect to such important matters as merger, consolidation, or dissolution of the carrier.

*CAB Opinion and Order, June 30, 1948.*

The further basis for respondent's argument that Toolco's control over TWA has not increased and cannot increase as a matter of fact may be very briefly set at rest. It turns upon the claim that Toolco, by controlling management proxies since October 17, 1944, has, together with such proxies, had the power to take any corporate action necessary with respect to the carrier in compliance with Delaware law. An answer to this claim rests upon the distinction between having the required voting power under Delaware law upon the vote of Toolco alone, as against having such power dependent upon the use of proxies to vote stock owned by others, who may not always acquiesce. Further, while Toolco has been able to secure proxies sufficient to enable it to control the day-to-day affairs of the carrier, it may not be able to obtain that acquiescence in matters such as merger, consolidation, or dissolution of the carrier. But, even if it be assumed that Toolco could at all times obtain sufficient votes to put in effect any desired corporate action, the fact remains that the letter agreement, through the retirement of the indebtedness therein created by conversion to stock, makes unnecessary any dependence upon other stock interests in TWA. Certainly, therefore, a control relationship has been established where the controlled company, which formerly responded to orders from one person with assistance from others by proxies, or otherwise, now responds or may respond to one person at its sole instance.<sup>12</sup>

<sup>12</sup> Significant also is the fact that under the supplementary agreement of December 26, 1947, modifying the letter agreement, TWA was required to come to Toolco to obtain consent of the latter before purchasing additional equipment. Certainly this transaction also represents an element of new and increased control arising out of the letter agreement.

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On the basis of the foregoing considerations and all facts of record, we find that the transactions evidenced by the letter agreement between Toolco and TWA, dated January 8, 1947, and accepted by the board of directors of TWA on January 9, 1947, have resulted in a further acquisition of control by Toolco over TWA within the meaning of section 408 of the Act. Accordingly, we are ordering that a hearing be held on the merits of the substantive case in accordance with the provisions of paragraphs (2) and (3) of our order of investigation of February 7, 1947, serial No. E-289.

An appropriate order will be entered.

O'Connell, Chairman, Ryan, Lee, and Jones, Members of the Board, concurred in the above opinion. Adams, Member, did not take part in the decision.

**ORDER**

The Board, by order serial No. E-289, adopted February 7, 1947, having instituted an investigation in the above-entitled proceeding for the purpose of (1) determining whether a certain letter agreement dated January 8, 1947, between Hughes Tool Company and Transcontinental & Western Air, Inc., (hereinafter called TWA), accepted by the board of directors of TWA on January 9, 1947, or any arrangement or action related thereto, or any change in the activities of Hughes Tool Company in the field of aeronautics since October 17, 1944, has resulted or will result in an acquisition of control of TWA for which Board approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended; (2) determining whether such acquisition of control, if any, is consistent

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with the public interest and fulfills the conditions of section 408; and (3) entering any such order or taking such further action herein as may be appropriate pursuant to the provisions of the Civil Aeronautics Act of 1938, amended; and

The Board, by order Serial No. E-657, adopted June 1947, having ordered, *inter alia*, that a hearing first be held to determine whether the transactions referred to in paragraph (1) above have resulted or will result in an acquisition of control of TWA for which Board approval required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, and that the hearing on the other issues raised by its order of February 7, 1947, be deferred pending the Board's decision on the aforesaid issue; and

The Board, after a public hearing and oral argument with respect to the matters referred to in paragraph (1) hereof, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof,

IT IS ORDERED, That a hearing be held with respect to the issues contained in paragraphs (2) and (3) of the Board's order of investigation of February 7, 1947, referred to above.

**CAB Opinion and Order No. E-4701,  
decided October 6, 1950**

[The following document, which is not part of the Record of this case, has been printed in this Appendix at the instance of defendants.]

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[CAPTION]

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**OPINION**

**BY THE BOARD:**

In a prior opinion and order, 9 C. A. B. 381, we held that the transactions evidenced by a letter agreement dated January 8, 1947, between the Hughes Tool Company and Trans World Airlines, Inc., (formerly Transcontinental & Western Air, Inc.) and accepted by the board of directors of TWA on January 9, 1947, resulted in further control of TWA by the Tool Company, for which Board approval is required under the provisions of section 408 (a) of the Civil Aeronautics Act.<sup>1</sup> We thereupon ordered further hearings on the merits, in accordance with provisions of paragraphs (2) and (3) of our order of investigation of February 7, 1947, serial No. E-289. The fundamental issue here is whether the further control sought to be held is consistent with the public interest under the language of section 408 (b) of the Act.

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<sup>1</sup> In *Transcontinental & W. A., Control by Hughes Tool*, 6 C. A. B. 153 (1944) under Docket No. 1182 we approved an acquisition of control of TWA by the Hughes Tool Company at a time when the latter held approximately a 45-percent stock interest in the carrier. Pursuant to the transactions evidenced by aforesaid letter agreement, the Tool Company increased its stock interest in the carrier to approximately 73 percent.

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After appropriate notice, public hearings were held before Examiner Edward T. Stodola in Los Angeles, Calif., from October 3 through October 7, 1949. Following briefs to him by all parties, the examiner issued his report, attached hereto, recommending that the Board approve the further acquisition of control of TWA by the Hughes Tool Company, subject to the same conditions imposed by the Board in Docket No. 1182. Public counsel filed exceptions to the report of the examiner and a brief in support thereof. No party has requested oral argument.

Public counsel argued that the control of TWA exercised by the Hughes Tool Company and Mr. Hughes, particularly during the period from October 17, 1944, to January 7, 1947, has been detrimental to the interest of the carrier and the public interest. However, he concluded that disapproval of the additional stock acquisition would not adequately remedy or mitigate the existing situation. He further argued that the Board does not have adequate power to deal with the situation, and was left no alternative than to approve such additional stock acquisition.

The record in this proceeding does not permit us to reach any other conclusion than that reached by the examiner, viz., that the further acquisition of control should be approved as being consistent with the public interest and the requirements of the Act. Accordingly, after consideration of the entire record and the examiner's report, together with the contentions of each party in briefs filed in this proceeding, we agree with and adopt the findings, conclusions, and recommended decision of the examiner.

In view of the foregoing and all facts of record, we find—

1. That the acquisition of further control of TWA by the Hughes Tool Company as a result of the transactions

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evidenced by the letter agreement of January 8, 1947, should be approved as being consistent with the public interest and the requirements of the Act; *provided*, however, that any control exercised by the Hughes Tool Company over TWA pursuant to our approval herein shall be subject to the terms and conditions imposed in our order of October 17, 1944, Docket No. 1182, as amended.

2. That the proceeding instituted by our order, serial No. E-289, dated February 7, 1947, should be terminated.

An appropriate order will be entered.

Lee, Jones, and Adams, Members of the Board, concurred in the above opinion. Rentzel, Chairman, and Ryan, Vice Chairman, did not take part in the decision.

**ORDER**

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

It is ORDERED, 1. That the additional acquisition of control of Trans World Airlines, Inc., (TWA) by Hughes Tool Company (Toolco), found to exist by the Board's opinion and order of June 30, 1948, (9 C. A. B. 381) be and it hereby is approved, *provided*, that such additional control shall be exercised in accordance with the terms and conditions of the Board's opinion and order, 6 C. A. B. 153, as amended, approving the original acquisition of control of TWA by Toolco.

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2. That the investigation instituted by order serial No. E-289, dated February 7, 1947, be and it hereby is terminated.

**REPORT OF EXAMINER EDWARD T. STODOLA**

Recommended that the Board approve the further acquisition of control of Trans World Airlines, Inc., (formerly Transcontinental & Western Air, Inc.) which resulted from the transactions evidenced by the letter agreement, dated January 8, 1947, between the Hughes Tool Company and TWA, subject to the same conditions imposed by the Board in its approval of October 17, 1944, of the Hughes Tool Company-TWA relationship under Docket No. 1182 (6 C. A. B. 153, 158).

Recommended that the proceeding instituted by the Board by order serial No. E-289, dated February 7, 1947, be terminated.

**APPEARANCES:**

*Thomas A. Slack* (Andrews, Kurth, Campbell & Bradley) for Hughes Tool Company.

*Gerald B. Brophy* (Chadbourne, Wallace, Parke & White-side) for Trans World Airlines, Inc.

*Harold Morgan and James L. Highsaw, Jr.*, Public Counsel.

**PRELIMINARY STATEMENT**

On October 17, 1944, in Docket No. 1182, the Civil Aeronautics Board approved an acquisition of control by the Hughes Tool Company (hereinafter referred to as Toolco) of Transcontinental & Western Air, Inc., (now operating under the corporate name of Trans World Airlines, Inc.,

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and hereinafter referred to as TWA) under section 408 of the Civil Aeronautics Act of 1938, as amended, subject to certain conditions.<sup>1</sup> In an opinion and order dated June 30, 1948, the Board found that the transactions evidenced by a letter agreement, dated January 8, 1947, between Toolco and TWA, and accepted by the board of directors of TWA on January 9, 1947, have resulted in a further acquisition of control by Toolco over TWA for which approval is required under said section 408 of the Act.<sup>2</sup> The Board thereupon ordered additional hearings to determine whether the new or further acquisition of control found to exist is in the public interest and fulfills the conditions of section 408, and whether any further order or action by the Board may be appropriate pursuant to the provisions of the Act.

After appropriate notice, public hearings were held at Los Angeles from October 3 to October 7, inclusive, 1949.<sup>3</sup> Briefs were filed with the examiner by all parties on February 14, 1950.<sup>4</sup>

THE ISSUES

Since TWA is an air carrier and Toolco is a "person engaged in any other phase of aeronautics,"<sup>5</sup> the further

<sup>1</sup> *Transcontinental & W. A., Control by Hughes Tool*, 6 C. A. B. 158 (1944).

<sup>2</sup> *Transcontinental & W. A., Control by Hughes Tool*, 9 C. A. B. 381 (1948).

<sup>3</sup> A part of the evidence received at the hearings has been withheld from public disclosure until further order of the Board. See order serial No. E-3380, dated September 27, 1949.

<sup>4</sup> Throughout the preliminary procedural steps in the second phase of this proceeding, respondents Toolco and TWA made known their desire to reserve all rights to contest the Board's opinion and order of June 30, 1948, in the event the Board's decision on the merits of the substantive case is adverse. See Report of Prehearing Conference served February 11, 1949, page 8: transcript of hearing herein, page 3.

<sup>5</sup> See findings at pages 198 and 199, *infra*.

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acquisition of control of the former by the latter falls within the provisions of section 408 (a) (5) of the Act, which makes such an acquisition unlawful unless approved by order of the Board. Section 408 (b) of the Act provides that the acquisition shall be approved, upon such terms and conditions as the Board shall find to be just and reasonable and with such modifications as the Board may prescribe, unless the Board finds that the acquisition of control "will not be consistent with the public interest," or that certain conditions specified in that section of the Act will not be fulfilled.

While all parties agreed that the ordering part of the Board's order of June 30, 1948, disposing of the jurisdictional phase of this proceeding, would govern as the issues in this second phase of the case, there was deep disagreement as to the precise scope of the inquiry ordered by the Board. On the question whether the further acquisition of control over TWA should be approved, the aforesaid part of the Board's order of June 30, 1948, ordered hearings with respect to the issues contained in paragraphs (2) and (3) of the Board's order originally instituting these proceedings.\* Paragraph (2) of the latter order merely restates the tests of approval provided for in section 408 (b) of the Act, which, once jurisdiction has been established, are enjoined upon the Board in any event. Paragraph (3) of the same order provides for taking any such other action (presumably other than approval or disapproval of the further acquisition of control) as may be appropriate pursuant to the provisions of the Act. Accordingly, in determining whether the further acquisition should be approved

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\* Order serial No. E-289, dated February 7, 1947.

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the primary question to be resolved is whether the transaction here under scrutiny is, or is not, consistent with the public interest.

Respondents Toolco and TWA both take the position that an inquiry as to whether or not the new or further acquisition of control which resulted from the letter agreement meets the public interest test of section 408 (b) of the Act must necessarily be limited to an examination of possible conflict between the aeronautical activities of Toolco and the increased measure of its control over TWA as an air carrier. In other words, it is their view that the Board in this second phase of the proceeding can look only to such conflict with the public interest as may exist, if any, between the aeronautical activities of the controlling company and the well-being of TWA as a certificated air carrier. Under this view, the hearings which are the subject of this report would have been limited to an inquiry into Toolco's plans, present and contemplated, for its aircraft division, and the propriety of approving the further acquisition would be tested only by the conflict of interest, if any, between Toolco's aeronautical pursuits and its control over the carrier. Public counsel, on the other hand, took the position that the inquiry must necessarily be a broader one; that in a control case of the type here under consideration the question as to whether the further acquisition of control is or is not in the public interest depends upon the application of the criteria set forth in section 2 of the Act to the facts and circumstances respecting Toolco's actions and policies with regard to TWA in the matters of financing, management, and related activities; and that in order to determine whether Toolco's increased measure of control is in the public interest it is pertinent to examine the

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manner of the general exercise of Toolco's control since the date of the Board's original approval thereof.

The examiner was compelled to reject respondents' view.<sup>1</sup> There is nothing in the Act, however the problem of the true intent of Congress is approached,<sup>2</sup> which would have

<sup>1</sup> Both at prehearing conference held February 4, 1949, as reflected in the Report of Prehearing Conference served February 11, 1949, pages 3 and 4, inclusive, and at the preliminary stages of the hearing herein, transcript pages 2 to 5, inclusive.

<sup>2</sup> Apparently upon the assumption that the meaning and significance of the phrase "public interest" were well understood, its purported function in the statute received little consideration from Congress, either at committee hearings or in debates on the floor. This phrase offers splendid illustration of the fact that critical words or phrases of statutes are rarely, if ever, entirely unambiguous or susceptible of precise definition or plain meaning. As is common with terms of this nature, their definition more often than not depends upon the interests of the party or person attempting to clothe the phrase with meaning.

It is, of course, elementary that a statute must be interpreted as a whole. Accordingly, it is necessary that the public-interest criteria set forth in the declaration of policy contained in section 2 of the Act be applied to the facts when determining whether a transaction arising under section 408 is consistent with the provisions thereof. It will, however, be observed that by virtue of the express language of section 2 the factors listed therein are not to be treated as exclusive.

Moreover, it will be remembered that under the Air Mail Act of 1934 (48 Stat. 933, Ch. 466) it was unlawful for any corporation engaged in any phase of aeronautics to acquire or hold any stock interest in a corporation holding an air mail contract. The Civil Aeronautics Act of 1938, which repealed the above-mentioned provisions of the Air Mail Act of 1934, provides that the Board may approve the acquisition of control of an air carrier by a corporation engaged in any other phase of aeronautics. But in clothing the Board with this authority, it is clear that Congress intended that it have very extensive powers over acquisitions of air carriers. See Report of Federal Aviation Commission, pp. 69-71 (1935); Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, H. R. 5234, 75th Cong., 1st Session, pp. 265-266, 341-344; Hearings before Senate Subcommittee on Interstate Commerce, U. S. Senate, S. 2, 75th Congress, 1st Session, pp. 414-415;

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given the examiner the authority to proscribe the inquiry in this second phase of the proceeding to the limited question urged upon him by the respondents. On the contrary, it appears clear that, once jurisdiction over an acquirer of an air carrier is found to exist, the testing of the propriety of approving the acquisition requires a rather broad inquiry into the relationships between the controlling and the controlled companies.

An examination of the additional control relationship here involved in the light of the standards set forth in section 2 of the Act, which the Board has repeatedly found to be necessary in similar cases,\* requires inquiry into the actions and policies of the controlling company with respect to TWA for the period during which the prior-approved control existed. Aside from any undesirable influence on an air carrier which might arise because of the acquirer's interest in a given phase of aeronautics, an acquirer of an air carrier is not without responsibility in other respects for an air carrier's general capacity to perform its public responsibilities. For inevitably the controlling company, by virtue of its investment in the acquired carrier, will endeavor to make itself accountable—as indeed the acquirer here under scrutiny had—for the managerial efficiency, the operating economy, and the financial integrity of the controlled carrier. Accordingly, in determining whether or not

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and Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, H. R. 9738, 75th Congress, 3rd Session, pp. 44-45.

\* *Western A. L., Acquisition of Inland A. L.*, 4 C. A. B. 654, 656 (1944); *National-Caribbean-Atlantic Control Case*, 6 C. A. B. 671, 678 (1946); *American Air., Control of Mid-Continent Air.*, 7 C. A. B. 365, 372-373 (1946); and *Central Air., Control Case*, 10 C. A. B. 538, 546-547 (1949).

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a particular acquisition should be approved, it is necessary to consider the over-all impact of the acquirer's plans and policies with respect to the controlled carrier.

It must, however, be remembered that in the instant proceeding we are dealing with a relationship which in principal part has the sanction of the Board. Since October 1944 Toolco has exercised control under a 45-percent stock interest in TWA pursuant to Board approval. The specific question now to be resolved is whether the additional degree of control resulting from the letter agreement of January 8, 1947, is in the public interest. As a result of the letter agreement Toolco acquired a 73-percent stock interest in the carrier.<sup>10</sup> The presence of the additional 28-percent control, together with the prior existence of a 45-percent control on the part of the same acquirer, appear to make plain the specific problems to which the examiner must address himself in the second phase of this proceeding.

Complete actual and legal control has been made certain under the additional acquisition. This new complete control, by virtue of the 28-percent additional ownership, vests in not a new controller, but in the same company exercising the 45-percent control. It would therefore appear entirely proper to test what this same controller may do with complete, unqualified control with what it did under a 45-percent ownership of the carrier. If we are not to use this reasonable approach, we are left merely with the acquirer's prognostications and plans with respect to its future policies for the carrier. Accordingly, an examination of the additional control relationship here under consideration

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<sup>10</sup> The details concerning the acquisition of the additional stock interest are set forth at pages 206 and 207, *infra*.

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requires an examination of the activities of Toolco with respect to TWA for the period during which the prior approved control existed. Such an examination, it must be clear, cannot be made for any other purpose at this time but to indicate the kind and character of control which for the past years has been, and which may in the future continue to be, exercised by the same controller exercising the additional degree of control arising from the transactions evidenced by the letter agreement of January 8, 1947.

It should be clear from the definition of issues outlined above, with respect to which each party submitted considerable proof, that the examiner proposes no broader scrutiny of the transactions here under consideration than that dictated by law, which he is obliged to follow. The manner in which this proceeding has arisen, the law under which the Board acquired jurisdiction, and the situation of fact in which this proceeding is set may be novel under section 408 of the Act, but the principles applicable to the disposition of the primary issues before the examiner are familiar rules of law and policy long followed by other agencies and by the Board.<sup>11</sup> Under the circumstances, the

<sup>11</sup> See footnote 9 for C. A. B. precedents. Provisions of the Civil Aeronautics Act relating to consolidation, merger, and acquisition of control were modeled after similar provisions of the Interstate Commerce Act and amendments thereto. Although the Interstate Commerce Act does not have a provision analogous to section 408 (a) (5), under which the Board acquired jurisdiction herein, the merits of proposed acquisitions under the Interstate Commerce Act are tested by the identical standard of public interest. I. C. C. decisions on the control of one company by another in the case of both railroads and motor carriers indicate the Commission's concern with a wide variety of controlling factors as bearing upon the public interest, including, among others, specific benefits to the public or the lack thereof, the availability of newer equipment, and the propriety of contemplated financial arrangements. See,

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nature and scope of the investigation ordered by the Board make it necessary that Toolco's past actions and policies with respect to TWA in matters of financing, management, and related activities be examined to determine the net effect of the additional acquisition upon the public interest.

**THE FACTS**

All of the outstanding stock of Toolco is owned by Howard R. Hughes, a well-known industrialist, movie producer, aviator, and aeronautical engineer. Mr. Hughes is president and a member of the board of directors of Toolco. The various Hughes enterprises are all operated either

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for example, *Nickel Plate Unification*, 105 I. C. C. 425 (1926); *Unification of Southwestern Lines*, 124 I. C. C. 401 (1927); *Control of B., R. & P. Ry.*, 181 I. C. C. 750 (1927); *Acquisition of Control by Panhandle & S. F. Ry. Co.*, 154 I. C. C. 342 (1929); *Richmond Greyhound Lines, Inc.—Control—Peninsula*, 5 M. C. C. 394 (1938); and *Wheeling & L. E. Ry. Co. Control*, 267 I. C. C. 163 (1946).

In administering the public-interest tests of sections 221 and 310 of the Communications Act of 1934 (the former concerned with consolidations, purchases, and acquisitions of control of one telephone company by another; the latter covering the transfer of licenses issued to radio broadcasting stations) the Federal Communications Commission has likewise relied upon a wide variety of public-interest factors in granting or withholding its approval. See, for example, *Lancaster Broadcasting Service, Inc., et al.*, 2 F. C. C. 164 (1935); *Parmer et al.*, 2 F. C. C. 172 (1935); *Crown Point Telephone Co., et al.*, 3 F. C. C. 152 (1936); and *Schield, Smithson, and Lewis et al.*, 7 F. C. C. 186 (1939).

Similarly, the Federal Power Commission, in exercising its authority to approve or disapprove leases or dispositions of property, mergers, or consolidations of facilities and purchases of securities, under the public-interest standard of section 203 of the Federal Power Act, has taken the position that the test of public interest is necessarily a broad and comprehensive standard embracing consideration of all the statutory purposes which that Act was designed to accomplish. See, for example, *Public Service Electric and Gas Co. of Newark*, 1 F. P. C. 545 (1938); *Pennsylvania Electric Company*, 3 F. P. C. 544 (1943); and *Southwestern Public Service Company*, 5 F. P. C. 703 (1946).

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directly or as divisions under the corporate organization of Toolco. Closely associated with Mr. Hughes is Noah Dietrich, executive vice president of Toolco, who is responsible for the day-to-day business direction of the company.

Prior to Board approval of its original acquisition of control of TWA, Toolco had been interested in the development of the Constellation-type aircraft, and originally contracted with the Lockheed Aircraft Corporation for the manufacture of such aircraft, partly for the benefit of TWA. In 1942 Toolco assigned all of its rights to such contracts to TWA in consideration of TWA's assumption of Toolco's obligations thereunder. Apart from its interest in the development of the Constellation plane and its acquisition of control of TWA, Toolco has been engaged in certain other phases of aeronautics through a division operated under the name of Hughes Aircraft Company at Culver City, Calif. The present record, however, shows that there has been no appreciable change in Toolco's operations in the field of aeronautics since the Board's order of October 17, 1944, originally approving Toolco's control of TWA. The principal activities at present of the aircraft division of Toolco consist primarily of experimental work on aircraft armament and accessories for the armed services. Except for the manufacture by its aircraft division of an airplane warning device known as the Hughes Airline Radar,<sup>12</sup> Toolco has no plans at present to develop or produce either aircraft or aircraft equipment which might be

<sup>12</sup> The warning device is an instrument which works on the radar principle, and is capable of warning a pilot of his proximity to any obstruction. On October 29, 1947, the Board, by order serial No. 1182, modified the original order approving acquisition of control under Docket No. 1182 so as to permit Toolco to sell the aforesaid radar units to TWA.

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used in commercial aviation and sold to TWA or other air carriers.<sup>13</sup>

When the Board approved Toolco's control of TWA in 1944, TWA was already one of our largest domestic air carriers, operating from coast to coast and authorized to serve 7,743 route miles. At the time of that approval, Jack Frye, E. Lee Talman, and T. B. Wilson served as president, executive vice president, and chairman of the board of directors, respectively, of TWA. These men continued in their respective capacities until their resignation during the managerial reorganization of the carrier in the early months of 1947, except that the late Paul E. Richter returned to his duties as executive vice president in 1945 after service with the armed forces, and Mr. Talman thereafter served as senior vice president. John M. Lockhart served as treasurer of TWA during the foregoing period except for a leave of absence from the carrier for approximately a year, during which time that position was held by John B. Thurston. C. W. Perelle, once a vice president of Toolco, was in charge of the aircraft division of the company during a part of the period here under review.

In the years between 1944 and 1947 the Board authorized very substantial additions to the TWA system, including 21,108 miles of route in overocean or foreign air transportation and 3,365 additional miles of route in domestic service. TWA is one of four domestic airlines selected to operate on a major scale in the international field after the recent war. Of the four, TWA was awarded the most route

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<sup>13</sup> A plywood flying boat, HK-1, which Toolco developed and built under a government contract, has commercial cargo possibilities; however, it was not intended to be used for anything but military purposes, and Toolco has no plans to build others like it.

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miles.<sup>14</sup> At present, TWA is authorized to serve 11,582 miles in domestic air routes and 23,317 miles in international air routes, or a total of 34,899 miles.<sup>15</sup>

To accomplish the extraordinary expansion made necessary by the additional routes thus acquired, and to meet its ordinary reconversion needs for the postwar period, TWA began planning and providing, well before the war ended, for additional flying equipment, for stocks of spare parts, for new overhaul bases, ticket offices, communications facilities, and more trained personnel. The Frye management developed a new organization structure for the company, which, among other things, regionalized control over the carrier's traffic activities; it added a number of high-salaried executives to top-level positions; and it set up administrative offices in Washington at considerable expense.

At the end of 1944 TWA had only 38 planes in service, all of the DC-3 type. A number of DC-3 planes and the five Boeing Stratoliners delivered to the armed services early in the war were returned to the carrier while the war was still in progress, and were reconverted to commercial passenger use. As the war approached its end, TWA endeavored to obtain, through either purchase or lease, more of the planes being turned over by the Government to the airlines. The carrier, moreover, had an option on 40 of the Constellations originally assigned to the armed services, and a preferred delivery position on new versions of the same aircraft. By the end of 1945 TWA had a fleet

<sup>14</sup> *Northeast Air. et al., North Atlantic Routes*, 6 C. A. B. 319. The decision in this case was rendered on July 5, 1945.

<sup>15</sup> The above mileage figures include mileage served under exemption as well as certificated mileage.

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of 93 aircraft, of which 67 were owned and 26 were leased from the Government. Of the aircraft then on hand, 18 were Constellations and 8 were of the DC-4 type. In addition, 18 Constellations were expected for delivery in 1946.

At the end of 1944 TWA had only 4,987 employees engaged in its commercial services.<sup>18</sup> By the end of 1945, the number of employees in its commercial services had risen to 9,960, or an increase of approximately 100 percent. By the end of 1946 almost 4,000 additional employees had been hired.

During 1945 two large hangars and associated buildings, which were formerly a part of the North American Aviation Bomber Plant at Kansas City, Kans., were leased by TWA for an overhaul base; during the same year temporary maintenance and overhaul facilities for international operations were acquired at the Newark (N. J.) Municipal Airport; and a large-scale program of increasing and improving ticket and reservations offices and other facilities was begun in 1945. During the same year the Frye management developed plans for aircraft purchases at an estimated cost of approximately 125 million dollars.

Under Frye's leadership, TWA pioneered in the development of new types of aircraft and operating procedures. TWA was the first scheduled carrier to purchase and operate the Douglas DC-2 type aircraft, the forerunner of the widely used DC-3. In July 1940 TWA put into operation five Boeing 307's (Stratoliners), four-engine transports with pressurized cabins. TWA was the first carrier to use aircraft of this type in service within the continental United

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<sup>18</sup> Approximately 1,800 others, however, were engaged in the carrier's war-contract services.

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States. In 1939 the carrier had become interested in the development of a new four-engine aircraft (the Constellation already referred to) which was to be larger and faster than the Boeing 307. The carrier has also pioneered new operating standards, including safety devices made possible through technological improvements.

When Toolco began buying into TWA in 1939, Frye welcomed the interest and cooperation of Mr. Hughes, whom he considered one of the industry's ablest technicians.<sup>11</sup> They collaborated in the design and development of the Constellation-type air transport. They collaborated closely in other respects in the operation and management of TWA, notably in purchase of necessary equipment, such financing as was necessary before the end of the war, and the prosecution of TWA's announced intention of 1943 to seek certain international routes.<sup>12</sup>

<sup>11</sup>Mr. Frye testified in part as follows in response to a question relative to the contributions of Mr. Hughes to the progress and welfare of TWA: " \* \* \* One thing about Mr. Hughes that interested me, and I enjoyed—caused me to enjoy working with him over a period of years, is that he did have an understanding of the airplane. In fact, the airplane is not a developed field air transportation as yet. It has many years yet to go before it will be there, and in the meantime if it was attempted to be treated by either the Government or the airlines, or a combination of them, as any other fully developed business is, it will be very, very slow in ever attaining its growth and development. Air transportation may be a great business some day, as, if and when it can be operated safely and dependably, and on schedule, but until it gets there a great deal of money has to be spent and people who have understanding of the technical problems involved will have to devote time and effort to solving those problems.

"Now, Mr. Hughes is one of the few people in the industry that has any of that kind of understanding \* \* \*" (Tr. pp. 373-374).

<sup>12</sup>In response to questions on matters of TWA policy which needed to be cleared with the controlling stockholder, Mr. Frye testified in part as follows: "Well, through the years I have been

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There developed, however, a gradual but ever-widening rift between the Frye management and officials of Toolco, including Mr. Hughes, with respect to the management plans and operating policies for the carrier. In principal part, this breach was due to a growing dissatisfaction with the Frye management and developing differences over means of meeting the financial needs of the carrier, although the situation was not without its interplay of personalities and such clash of personal ambitions and views as often arise between the officials of a controlling corporation and the management of an affiliate.<sup>13</sup>

Tested by the property then owned, the volume of traffic carried, and the company's earning power, TWA appeared to be sufficiently capitalized during the war period. Thus, as of December 31, 1944, the carrier had a net worth in excess of 16 million dollars. It then had no long-term debt,

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in the airline business I have had a number of controlling stockholders such as General Motors and Pennsylvania Railroad and banking interests such as Lehman Brothers, and it was generally the practice of management to consult those groups when important decisions were to be made concerning expansion of the company, financing, purchases of equipment, and so forth \* \* \* (Tr. p. 365).

<sup>13</sup> Mr. Frye testified in part as follows concerning his relations with Mr. Hughes and Mr. Dietrich: " \* \* \* Since his (Mr. Hughes') views paralleled mine \* \* \* I was interested in helping bring about his acquisition of control of TWA. However, his people in Houston, headed by Mr. Dietrich, had entirely different views as to policies concerning the operation of an airline. They looked at the results as a business man would, right along with the result of other airlines who were not engaged in the type of pioneering and development and expansion that TWA was, and they compared the results critically. TWA, I think, was the first interest that Mr. Hughes had had in many years in which he didn't turn over the direction of to his Houston group. Those people naturally resented not being included in that picture \* \* \*" (Tr. pp. 371-372).

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a capital stock base of approximately 5 million dollars," paid-in capital surplus of 4 million dollars, and earned surplus in excess of 7 million dollars. TWA's management, however, was acutely aware that substantial financing would be necessary to meet the carrier's postwar needs. The reason for their concern is obvious. TWA, like every other large certificated carrier, was suffering from a deficiency in air transport equipment before the war ended. Indeed, TWA had a substantial quantity of new-type planes on order even before this country entered the war. Moreover, the certification of TWA of extensive international routes in July 1945 made it imperative that the carrier take immediate steps to obtain capital sufficient to discharge its added responsibilities.

From February 1944 until the close of 1946 the management of TWA made repeated requests of Toolco for approval of plans to finance the carrier's expansion in routes and equipment. There were repeated discussions relative to financing within TWA's staff, between TWA's officers and the management of Toolco, and between officers of both Toolco and TWA on the one hand and various financial institutions and underwriting groups on the other. The principal officers of the carrier, particularly Messrs. Frye, Talman, Lockhart, and Thurston, were of one mind in contending that TWA's financial position needed to be strong enough to permit it to purchase equipment on a competitive basis with other airlines. To raise the necessary capital, they were convinced that the sale of equity securities in

<sup>"</sup>The carrier at that time had an authorized capitalization of 1,000,000 shares of common stock of the par value of \$5 per share, of which 975,586 shares were then issued and outstanding.

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substantial volume was decidedly preferable to reliance upon large borrowings. They took the further position that if a substantial proportion of TWA's total capital was to be represented by equity rather than by fixed obligations, it was necessary that the carrier perform its financing well in advance of actual expenditures. Moreover, they feared that the freezing of the common stock to the number of shares then existing would eventually affect the amount of senior financing (preferred stock and debt) which could be promoted and which, in turn, would keep TWA from having enough capital to meet its needs. Finally, they warned against the dangers of excessive debt and urged that the carrier take advantage of the strong capital market conditions before unfavorable factors set in to impair the popularity of airline securities.

Before additional common stock in any considerable amount could be sold, it was necessary that the agreement and act of consolidation, forming the certificate of incorporation or charter of TWA, be amended so as to increase the authorized shares of capital stock. The carrier is a Delaware corporation, and under Delaware law such an amendment, to be effective, had to be approved by the holders of the majority of the outstanding common stock of the company. Since Toolco held approximately 45 percent of the outstanding stock and the rest of the shares in the carrier were widely scattered, the consent of Toolco as the principal stockholder was, as a practical matter, required before the certificate of incorporation could be amended to increase the authorized common stock of the carrier. Accordingly, before any plan of financing the expansion of operations of the carrier by the sale of common stock could be effectuated by the TWA management, the charter of

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the carrier required change to authorize the issuance of additional stock."<sup>11</sup>

There is no evidence that at any time during the long period of effort on the part of the carrier to get Toolco committed to some specific plan for financing, either Mr. Hughes or Mr. Dietrich disagreed with the management's basic position that substantial additional financing would be necessary, or that they denied TWA's representatives a hearing with respect thereto. However, Mr. Dietrich made it clear to Mr. Talman that the TWA management was not to make any commitments regarding financing without first clearing with him, and Mr. Frye had a specific understanding with Mr. Hughes that no common stock was to be issued without the approval of Mr. Hughes.

But in spite of numerous preliminary discussions and repeated efforts on the part of the Frye management to arrive at a mutual understanding with respect to a program for large-scale financing, TWA officials were not able to sit down with officials of Toolco to work out a detailed financing program agreeable to both until July 17, 1945, when Mr. Talman and Mr. Thurston met with Mr. Dietrich and Mr. Perelle at Houston, Tex. Mr. Dietrich then recognized that TWA's capital needs could not be financed without increasing the carrier's common-stock base. Mr. Dietrich stated he was willing to commit Toolco to vote its stock to permit a liberal amendment of a carrier's certificate

<sup>11</sup> Although the individual consent of Mr. Hughes was not technically required to amend the charter, Toolco and Mr. Hughes are used interchangeably herein as the principal stockholders of TWA for the purpose of consent to such amendment. It was conceded at the hearing that where, as in the instant case, a wholly owned corporation acts as a stockholder, its sole owner may be considered *per se* with itself.

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of incorporation to increase the carrier's authorized capital stock. However, Mr. Dietrich further informed Mr. Talman that final decision in the matter was up to Mr. Hughes, but indicated that he would do all he could to assist in obtaining Mr. Hughes' approval. It was tentatively agreed that TWA would need new financing to the extent of approximately 100 million dollars, and a financial plan was formulated whereby a substantial portion of such funds would be raised through the sale of common and preferred stock. Then, during the early days of August 1945, Mr. Frye, as president of the carrier, and Mr. Hughes had discussions during which Mr. Frye submitted plans to raise approximately 130 million dollars in new capital funds. Mr. Hughes, however, wanted further time to consider the plans and agreed to meet with Mr. Frye soon again for final agreement thereon. Thereafter, in mid-September 1945 Mr. Frye sent Mr. Hughes a strongly worded appeal urging immediate action with respect to financing for the carrier. Nothing, however, came of these efforts.

Toolco's reluctance to participate in any of the plans submitted by the Frye management, each of which proposed substantial equity financing, needs some specification at this point. Toolco's principal officers, including Mr. Hughes and Mr. Dietrich, feared that Mr. Frye's chief objective appeared to be expansion without regard to profit making. It was Mr. Dietrich's view that, in the years prior to 1947, TWA's management exercised less control over budgets and expenses than did the managements of such competitors as United and American. He attacked certain expenditures made in the immediate postwar period as being improvident. He complained that TWA had been carrying more than its proportionate share of the cost of pioneering for

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the air transport industry. Both Mr. Hughes and Mr. Dietrich felt that Frye's recommended program for aircraft purchases was far too ambitious and would have seriously overequipped the carrier.<sup>22</sup>

As the financial overseer of the Hughes enterprises, Mr. Dietrich personally lacked confidence in the management of TWA for several years prior to 1947; gradually, he and his associates in the Houston offices of Toolco were successful in convincing Mr. Hughes that certain operating economies were absolutely necessary to the life and welfare of TWA, and that the existing management was not disposed to effectuate them. After the war ended, Mr. Dietrich's previously expressed desire for substantial equity financing for the carrier was somewhat modified by his lack of faith in the Frye management and by fears that the funds contemplated would not be wisely spent. Attempts at arriving at a financing program acceptable to Toolco were therefore impeded by the lack of faith on the part of Toolco officials in the Frye management.

Following the foregoing failures of TWA's management and Toolco to agree on a program to finance TWA's post-war needs, a number of other proposals to raise the required capital were considered.

<sup>22</sup> Indeed, in his testimony at the hearing (September 11, 1947) on the first phase of this proceeding, Mr. Dietrich stated that TWA did not need additional equipment, and that in his opinion all the major airlines were then rapidly becoming overequipped. He contended then that the increase in available seats as the result of postwar equipment acquisitions of the major carriers was outstripping available traffic volumes and causing unprofitable operations. He also contended that the airlines should have limited their acquisitions to DC-4's after the close of the war, which were then available in large numbers as army surplus, and that the armed services should have borne the cost of developing new transports and thereafter leased them to the airlines.

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On October 3, 1945, TWA addressed a letter to the Export-Import Bank requesting a line of credit to the carrier of \$150,000,000, to be provided jointly by the Export-Import Bank and the Reconstruction Finance Corporation.<sup>23</sup> Conversations were had from time to time with representatives of both institutions with respect to TWA's financing program. Meanwhile, in November 1945 a program of debt financing was entered into with the Equitable Life Assurance Society of the United States, whereby Equitable purchased an issue of 3-percent sinking-fund debentures from the carrier in the principal amount of \$30,000,000.<sup>24</sup> On December 19, 1945, in a letter to the Reconstruction Finance Corporation, the carrier referred to previous conversations with the RFC and the Export-Import Bank concerning TWA's financial needs. The letter proposed a program covering \$100,000,000 of general credit to TWA junior to the Equitable loan of \$30,000,000, and secured by the equipment assets to be acquired through the use of this credit. The proposal was rejected.

When the anticipated loans from the Export-Import Bank and the RFC did not materialize, principally because the carrier had failed to establish that private financing was unavailable, both TWA and Toolco continued to search for major means of raising additional funds. On May 10, 1946, Equitable purchased an issue of 2½-percent sinking-fund

<sup>23</sup> TWA was about to inaugurate service on its international routes, and these operations were expected to require very substantial capital expenditures, including a large number of four-engine aircraft.

<sup>24</sup> The debentures were issued pursuant to a purchase agreement dated November 30, 1945, and in accordance with the provisions of a trust indenture dated December 1, 1945.

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debentures in the amount of \$10,000,000<sup>\*\*</sup> from TWA. TWA next considered a financing proposal by the Bankers Trust Company of New York. This financing plan, which came into being shortly after the second Equitable loan, involved a proposed bank credit of \$80,000,000, contingent upon the company's doing an added \$20,000,000 in equity financing, presumably through the sale of common stock. Preliminary discussions on this proposal were had by Mr. Lockhart, TWA's treasurer, in company with Mr. Chauncey Dodds of the RFC, who was present because of TWA's prior negotiations for RFC credit. The Bankers Trust Company agreed to head the banking group providing the loan funds. It expected to be regarded as TWA's principal bank, and agreed to take \$10,000,000 of the total loan. Nothing conclusive developed from these discussions, principally because Mr. Frye was unable to obtain a firm commitment from Mr. Hughes for the equity financing involved, although Toolco was in a position to take up a pro rata share of the contemplated stock offering.

There followed in June 1946 further negotiations and further discussions in attempt to arrive at a definite plan for financing the carrier. Representatives of several eastern financial institutions, including the Bankers Trust Company of New York, the Union Trust Company of Pittsburgh, and the First of Boston Corporation, were invited to meet with Mr. Hughes and Mr. Dietrich in Los Angeles for this purpose. Neither Mr. Frye nor Mr. Talman attended this meeting.

<sup>\*\*</sup>This second series of debentures was issued under the trust indenture of December 1, 1945, as amended by a supplemental indenture dated June 1, 1946.

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The discussions of June 1946 led to further meetings in Los Angeles in the month of August of the same year. TWA was represented at these meetings by Mr. Talman. These discussions led to a proposal for large-scale financing through a group of banks headed by the Union Trust Company of Pittsburgh, now the Mellon National Bank and Trust Company. A complete plan was evolved which would have raised considerable capital. The underwriting was to be done by the First of Boston Corporation. This program embraced total financing of approximately 100 to 110 million, including the continuance or refunding of the Equitable loans. In the event Equitable stayed in the picture, the plan including a 35-million-dollar sale of stock by the carrier, 25 million dollars in direct credit from the banks, and an additional 10 million to be furnished by Toolco. The plan for the sale of equity securities was to be a flexible one, but it contemplated an offering of straight preferred stock in considerable volume. The amount of capital to be furnished by Toolco was all to be raised through the purchase of common stock from the carrier.

There was delay on the part of the parties concerned in reducing the various tentative lending and underwriting arrangements into formal agreements, even though Mr. Hughes had agreed to the substantial equity financing involved in the over-all plan. The bankers were apparently wary of a possible change in general market conditions which might make it difficult for the underwriters to carry out their part of the transaction. Moreover, the proposed financing was conditioned upon (a) a change in the management of TWA, (b) the security market's maintaining its relatively favorable mid-1946 level.

To meet its obligation in the proposed financing, Toolco, in a letter dated August 28, 1946, offered to purchase

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222,222 shares of common stock from TWA at a price of \$45 a share. However, a letter from Mr. Dietrich to Mr. Talman dated September 3, 1946, withdrew any previous offer of Toolco to purchase stock in the carrier since (a) Toolco's purchase of common stock, the public offering of stock securities, and the bank credit arrangements were to be concluded simultaneously, (b) neither the underwriters nor the bankers would make final commitments until the common-stock financing was accomplished, and (c) he, Dietrich, had been instructed by his company to withdraw the previous offer.

From its terms and from the testimony adduced with respect thereto, the apparent sense of the September 3 letter is that Toolco would not go through with the offer, since neither the underwriters nor the bankers would commit themselves on the entire program, and the bankers presumably would negotiate on the credit involved only after the equity financing had been completed. In the end the unresolved differences between Toolco and the management of TWA, plus Toolco's withdrawal of its proposed purchase of 222,222 shares of the carrier's common stock and a definite unfavorable turn in the security markets in September 1946, resulted in a complete abandonment of the so-called Union Trust plan.

TWA's financial condition deteriorated rapidly during the year 1946. In the months of November and December 1945, and during the first part of 1946, the previous months of relatively stable operations of the carrier were turned into severe losses, resulting primarily from the heavy expenses attending the inauguration of the international routes. The corner appeared turned in June 1946, when a slight profit was shown. In June and July, however, the

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entire industry began suffering a decline in earnings as a result of a series of unfortunate accidents in May through July of that year. Immediately thereafter came two special developments, the pilots' strike and the grounding of the Constellations, which for the last half of 1946 resulted in the operation of only a skeleton service by TWA. In 18 months the stockholders' equity had been reduced from \$18,665,483 at June 30, 1945, to \$4,177,518 at December 31, 1946, a reduction of almost \$14,500,000. Short-term debt amounted to \$4,340,000, and long-term debt to \$38,947,124. For the calendar year 1946, the carrier showed a net loss of approximately 14½ million dollars.

Toward the end of 1946 TWA's financial condition became most critical. All efforts of refinancing had failed. The record shows that in the closing months of 1946 TWA could not attract any capital, and was facing bankruptcy.\* The record further shows that Toolco was willing to be of further financial assistance, but was unwilling to advance additional money to save the carrier without assurance that the management of the carrier would be replaced and the carrier reorganized and run in agreement with the wishes of the principal stockholder and/or its representatives.

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\* The years 1946 and 1947 were a time of crisis not only for TWA but for most of the air transport industry. A number of carriers were in serious financial difficulties and nearly all suffered severe operating losses. Conditions became so alarming that in July of the latter year President Truman appointed the President's Air Policy Commission, and that was followed soon thereafter with action by Congress in setting up the Congressional Aviation Policy Board. Both investigating groups made inquiry into the causes of the industry's financial plight.

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On January 9, 1947, the TWA board of directors accepted a proposal of Toolco dated January 8, 1947, herein known as the letter agreement, under which Toolco agreed to lend TWA \$10,000,000, and the board of directors would be reconstituted so that a majority of the directors of the carrier would be nominees of Toolco. On January 9, 1947, the board of directors was so reconstituted. Pursuant to the above-mentioned agreement between Toolco and TWA, Toolco lent TWA \$10,000,000, in the period from January 9, 1947, through May 29, 1947, the loans being evidenced by TWA's subordinate convertible 2½-percent notes due June 2, 1956.<sup>11</sup> These notes were convertible by the holder at any time before maturity into TWA's common stock at the par value thereof (\$5), or at the average of the prices at which the last sale of such stock was made on the New York stock exchange on each of the last 10 business days preceding receipt by TWA of notice of exercise of the right to convert, whichever was greater. TWA could require the holder to convert on January 1, 1950, and on that day only, at a price calculated by the same method, by mailing to the holder notice of its election so to do.

On December 26, 1947, Toolco, in a further agreement with TWA, waived its right to require payments of these

<sup>11</sup> The trust indenture under which TWA sold its debentures to Equitable contained certain restrictions against the creation of additional debt by the carrier. On January 31, 1947, Toolco, TWA, and Equitable entered into a so-called three-party agreement which provided, among other things, for Equitable's waiver of the covenants of the trust indenture to the extent necessary to permit TWA to incur the indebtedness evidenced by the convertible notes. Equitable has also waived compliance by TWA with other covenants of the trust indenture, as from time to time amended, on a number of occasions.

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notes, or interest thereon, in money or in any form other than stock. On June 15, 1948, TWA's board of directors authorized an offer to Toolco to convert the \$10,000,000 principal amount of the notes and interest accrued thereon to June 18, 1948, into TWA's common stock at a price of \$10 per share. The offer was accepted by Toolco on June 8, 1948. The resulting agreement was approved by TWA's stockholders (including the holders of a majority of the common stock not owned by Toolco) on August 10, 1948.\* The agreement was consummated on or about August 24, 1949, and 1,034,423 shares of common stock were issued upon surrender of the notes for retirement. Had TWA had the right to require conversion on June 18, 1948, the date of acceptance by Toolco of the proposal, the conversion price would have been \$15.80 per share, and Toolco would have received 654,699 shares.<sup>\*\*</sup>

As a result of the letter agreement, Toolco acquired an indefeasible right to a substantial additional stock interest

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\* On the same day TWA's stockholders also voted to increase the total number of authorized shares of common stock of the carrier from 3,000,000 to 4,000,000 shares. The authority to issue common stock up to 8,000,000 shares had been voted the previous year.

\*\* In recommending TWA's offer to convert at \$10 per share to its stockholders, the board of directors of the carrier were of the opinion that the successful sale of equity securities in the future would be impaired so long as doubt existed as to the time of conversion of the 2½-percent notes, or the price at which they may have been converted into common stock. The board of directors urged that conversion would eliminate doubt as to the time and price of conversion over the years pending the maturity of the notes, and that conversion was in the interest of the carrier. Efforts by a minority stockholder to enjoin the proposed conversion were denied by the U. S. District Court for the District of Delaware. *Sneider v. Transcontinental & Western Air.*, 79 Fed. Supp. 839 (1948).

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in TWA.<sup>20</sup> After the conversion arrangements were consummated in August 1948, Toolco's ownership interest in the carrier rose from 45 to approximately 73 percent, thereby obtaining, as a result of the transactions evidenced by the letter agreement, complete legal control of the carrier. However, even before the conversion, and as a direct result of the letter agreement, Toolco had acquired complete management control of the carrier. Prior to January 9, 1947, all of the directors of TWA were nominees of Mr. Frye. Reconstitution of the TWA board of directors, pursuant to the letter agreement, made certain that the management of the carrier on and after January 9, 1947, was in agreement with the wishes of the principal stockholder and/or its representatives.

Drastic management changes followed the reconstitution of the board of directors. Frye, Wilson, Talman, and Richter resigned. A number of top-salaried executives were released. The new management instituted a vigorous program of economy by installing a rigid system of expenditure control and dismissing thousands of the carrier's employees. Further changes consisted of a revision of the management structure of TWA<sup>21</sup> and a critical review of the carrier's equipment program.

As a part of Toolco's program of retrenchment, TWA, after acquiring 4 Model 049 Constellations in March 1947, canceled its commitments for the Model 649 equipment program. But before that year was over, it became evident

<sup>20</sup> See *Transcontinental & W. A., Control by Hughes Tool*, 9 C.A.B. 381, 385-391.

<sup>21</sup> Primarily in the change from the regionalized to a so-called straight-line type of organization.

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that the carrier would need substantial additions to its aircraft fleet. However, TWA's heavy burden of debt seriously impaired its ability to finance on its own the necessary purchases of equipment. As of June 30, 1947, the carrier's short-term debt stood at more than \$1,400,000 and its long-term debt amounted to approximately \$53,800,000. As of September 30, 1948, the carrier had short-term debt outstanding in the excess of \$4,000,000, and its long-term indebtedness amounted to \$51,461,600. In spite of this heavy debt structure and the debt service on its fixed obligations,<sup>22</sup> TWA, with Toolco's aid, continued to expand its fleet of aircraft. The principal additions to its fleet in the years 1947 through 1949 were made possible through special credit arrangements with aircraft manufacturers and through borrowings from various banks.

The record shows that this equipment could not have been obtained without the financial assistance of Toolco. Of 6 Constellations acquired in 1947, 4 were financed largely from funds advanced by Toolco under the terms of the letter agreement of January 8 of that year. During 1948 previous outstanding purchase money obligations covering 9 Constellation airplanes were consolidated, with the aid of Toolco, with the financing of 12 new Constellations into a new chattel mortgage. In February 1949 TWA en-

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<sup>22</sup> This service divides between interest payments and principal maturities approximately as follows:

Calendar year	Principal maturities	Interest	Total
1947	\$ 674,000	\$1,501,121	\$2,175,121
1948	2,968,040	1,712,301	4,680,341
1949	6,806,980	1,589,071	8,476,051
1950 (est.)	7,168,400	1,384,190	8,552,590

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tated into a conditional sales agreement with Toolco for 2 Constellations.<sup>\*\*</sup> In August 1949 TWA entered into a bank credit agreement to assist in financing 20 more Constellations. As a part of this latter agreement, Toolco agreed to guarantee that the net worth of the carrier would not be less than \$20,000,000 as of December 31, 1949. By agreement dated February 2, 1950, TWA purchased 6 more Constellations under a conditional sales agreement with Toolco.<sup>\*\*</sup> The arrangements for the purchase of the airplanes covered by this sales agreement were entered into directly by Toolco to assist TWA in acquiring such airplanes. It is impossible now for TWA to acquire aircraft without obtaining prior consent or waivers under various financial agreements it has entered into in the past, including the trust indenture covering the debentures held by Equitable.<sup>\*\*</sup>

Although TWA continued to lose money during the years 1947 through 1948, its over-all financial condition has shown considerable improvement. On December 31, 1945, the carrier's net worth was approximately \$18,500,000; by the end of 1946 it had fallen to about \$4,200,000; and by the end

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<sup>\*\*</sup> Approved by order serial No. E-2404 in compliance with the conditions set forth in the Board's order under Docket No. 1182.

<sup>\*\*</sup> This latter sales agreement was approved by order serial No. E-4180 to comply with the conditions set forth in the Board's order under Docket No. 1182.

<sup>\*\*</sup> Since the date of the hearing herein, TWA has arranged to lease 12 Martin 202's (beginning July, 1950) and the carrier has very recently agreed to purchase 30 Martin 404's, the first to be delivered by April 30, 1951. The Martin 202's would replace the carrier's DC-3's serving on domestic routes, and will presumably be returned when the 404's are delivered. The financing details of the foregoing leasing and purchase agreements are not of record.

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of 1947 the carrier had a negative net worth of about \$3,210,000. Contrasted with this cumulative deterioration of the financial condition of the carrier is the marked improvement of its financial structure as shown by the return of the net worth to about \$8,500,000 on December 31, 1948, and to approximately \$21,000,000 on December 31, 1949.

This recovery in the carrier's financial position is due in substantial part to additional equity capital brought into the company during 1948 and 1949. As already noted, the 10 million dollars in convertible notes held by Toolco, with interest accrued thereon, was converted into TWA stock in August of 1948; in February 1949 the carrier offered 404,112 shares of stock to stockholders, 375,036 shares of which were sold pro rata to TWA stockholders at \$10 per share, including 297,304 shares purchased by Toolco. The remaining unsubscribed shares were underwritten by a group of investment bankers.

Improved operating results between the years 1947 and 1949 also helped strengthen the carrier's financial position. The year 1947 had been one of consolidation and readjustment for the carrier; it concentrated on shaking down the carrier's expanded organization,<sup>\*\*</sup> on reducing costs, and

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<sup>\*\*</sup> The record made in the public hearings shows that, before it was replaced, the Frye management had engaged Robert Heller and Associates, a firm of industrial consultants, for the purpose of improving the organization structure of the carrier. That firm's studies were still unfinished in January 1947, although they had submitted two preliminary reports to Mr. Frye prior to that date. None of the principal recommendations of the Heller surveys had been placed into effect by the Frye management. The record made in the public hearings also shows that, as part of the negotiations for substantial credit for the carrier during 1946, the bankers involved had been studying the carrier's operating record and its management structure. In principal part, the record made in the confidential session of the hearings concerns the details of the Heller reports and the survey of one of the negotiating banks.

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on exploiting the traffic potential of its routes. The company's net loss for 1947 was approximately 8 million as compared with the previous year's loss of approximately 14½ million. The carrier's net loss was reduced to \$452,000 in 1948. The company's better earning position in 1948 resulted principally from a substantial increase in gross revenues with a considerable decrease in over-all costs. The increased gross revenues were accounted for by increased traffic, higher passenger fares, and higher rates for the transportation of mail. For the calendar year 1949 the carrier showed a net profit after taxes of approximately \$3,700,000.

Strong efforts were made after January 1947 toward the reduction of expenses. Significant yardsticks for measuring economy of operation in air transportation are costs per available ton-mile or per revenue ton-mile. Attached hereto as appendix No. 1 is a comparison of TWA's operating expenses with those of the other three of the so-called Big Four carriers (American, Eastern, and United) in terms of the foregoing yardsticks. Without attempting to assess the reasonableness of particular expenditures, the aforesaid tabulation shows that TWA's over-all costs for its domestic operations have improved considerably since the managerial reorganization of the carrier in 1947, and are generally in line at present with the costs of the other carriers.

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both of which were made for private use of TWA. Some evidence with respect to each of the foregoing is also contained in the public record. The examiner has considered the entire record made in aforesaid confidential session, and none of the matters contained in last part of the record can change or disturb the findings made in this report.

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TWA's costs for its transocean operations over the Atlantic have likewise been considerably improved during the past 3 years and compare favorably on an over-all basis with the other two American-flag carriers, Pan American Airways and American Overseas Airlines, in that service. TWA's relative position is shown by the tabulation attached hereto as appendix No. 2.

Aside from the increased mail-pay support it has received, TWA's improvement in both earnings and financial structure since January 1947 can be attributed in large part to the direct assistance it has received from Toolco and Mr. Hughes. As already noted, Toolco took a hand in the early months of 1947 in initiating certain management changes, including a reduction in the working force and the installation of a rigid system of expenditure control. Moreover, it is clear that the carrier could not have survived the financial crisis it faced in the closing months of 1946 without the help of Toolco and Mr. Hughes. A substantial portion of the savings in TWA's operations were made possible by the addition to its service of new modern aircraft and consequent reduction of the carrier's seat-mile cost. Since January 1947 TWA has added, or will have added as soon as it obtains delivery, 44 Constellation aircraft.

In addition to saving the carrier from bankruptcy or reorganization, Toolco's purchase of the \$10,000,000 in convertible notes under the letter agreement made it possible, as already noted, for TWA to use a part of said funds for the purchase of additional aircraft. Toolco helped further to improve the financial structure of the carrier by voluntarily agreeing in December 1947 to waive all right to obtain repayment of the debt evidenced by the letter

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agreement of January 8 of that year, except through the issuance of stock in accordance with the terms of the convertible notes, and by effecting a conversion of the notes thereafter into common stock of \$10 per share, notwithstanding the fact that conversion could not have been required by TWA until January 1, 1950. Further, Toolco's advanced commitment to take up its pro rata portion of the carrier's offering of 404,112 shares of stock in February 1949 made it possible for the carrier to undertake that financing at that time. In connection with a recent commitment by the carrier for 20 new Constellation aircraft, Toolco made the financing of this purchase by the banks possible by entering into a commitment with the banks that, if, as of December 31, 1949, the net worth of TWA had not been increased to \$20,000,000, Toolco would undertake to provide the amount of the deficiency. This commitment was made by Toolco without any profit to itself. Finally, TWA has not only been a substantial beneficiary of the financial aid to the carrier by Toolco but the initiative and support of Mr. Hughes and Mr. Dietrich have been of constant help to the management and to the various operations departments of the carrier. It is also the judgment of the present management of the carrier, that Mr. Hughes has contributed enormously to the technical proficiency of TWA.

In reciting the foregoing facts with respect to Toolco's policies toward TWA since the date of the approval of the original acquisition of the carrier, greater stress was necessarily laid upon evidence relating to plans for financing the carrier than upon matters of management, attempts to acquire additional routes, and related activities, because in their dealings and relations with each other during the

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period under review, Toolco and TWA were primarily concerned with ways and means of providing the necessary capital requirements for TWA. The greater part of the record in this investigation therefore reflects their preoccupation with efforts to finance the carrier. However, in fairness to respondents, and in order to set forth their position in the context of industry conditions, it is necessary to view briefly the experience of other air carriers and the air transport industry as a whole in planning for the capital requirements necessary in the immediate post-war period, and to examine respondents' stated reasons for resorting to so much debt financing to provide TWA's capital needs.

As the war ended, airline capital structures were almost entirely free of debt. Only two domestic carriers, Mid-Continent and Western, had long-term debt outstanding,<sup>87</sup> and those debts totaled only about \$500,000. One carrier, United, had outstanding \$10,400,000 of preferred stock. Of the long-term investment of approximately \$143,000,000 in the 16 domestic trunk-line carriers, about \$132,000,000 represented common-stock equity.

The industry's postwar expansion necessitated an extraordinary increase in capital funds. In the 3 years from the close of 1944 to the end of 1947 the 16 domestic trunk-line carriers alone acquired about 217 million dollars in new capital funds. Substantial amounts of new capital were also raised by the international carriers and the so-called feeder operators. However, despite the advantages of a

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<sup>87</sup> Exclusive of advances from affiliates.

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very favorable market," the industry made only small use of common-stock financing in raising the capital necessary for postwar growth.

Thus, in the year 1945, notwithstanding the very favorable market, only 2 of the domestic trunk-line carriers, Delta and Northwest, marketed any appreciable amount of common stock.<sup>\*\*</sup> In July of that year Pan American raised approximately \$43,000,000, by the sale of common stock. In the year 1946, 5 of the domestic trunk-line carriers, Chicago and Southern, Colonial, National, Northwest, and Western marketed issues of common stock. In the same year American Overseas sold common stock in the amount of 12½ million dollars to its stockholders. In the year 1947 Colonial, Delta, and Northwest sold common stock. But 9 carriers, American, Mid-Continent, Braniff, Northeast, Continental, Capital, United, Eastern, and TWA failed to utilize common-stock issues to provide funds for postwar needs during the years 1945 to 1947.

The larger domestic carriers have financed their postwar expansion for the most part by the sale of preferred stock

<sup>\*\*</sup> Throughout the latter part of the war and in the early postwar period the market for airline stocks was excellent. Before the stock-market break in mid-1946, the appreciation in airline stocks was considerably greater than that for stocks generally. Between the year 1942 and early 1946, industrial stock prices doubled, while airline stock prices increased on the average more than five-fold. However, the break in stock prices in 1946 was much more severe in the case of airline stocks than in the case of stocks generally.

<sup>\*\*</sup> As a matter of fact, the market for airline stocks was quite receptive during most of the calendar year 1944, but only two domestic carriers, National and Northwest, floated common-stock issues during that year.

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and by borrowings. American sold \$40,000,000 worth of sinking-fund debentures in the summer of 1946 and a like amount of preferred stock.<sup>\*\*</sup> Earlier in that year this carrier had obtained a short-term bank loan of \$25,000,000 as interim financing. In February 1948 American arranged for a stand-by credit of \$7,500,000. Eastern made stand-by credit arrangements in December 1946 in the amount of \$20,000,000. Along with its sale of common stock in October 1946, Northwest arranged for a \$10,000,000 stand-by credit. This credit was replaced by an \$18,000,000 credit in April 1947, and more than \$9,000,000 was raised through the sale of preferred stock. TWA's heavy reliance on debt financing has already been noted. United made no financial provision for its large expansion program until early in 1947, when some \$49,000,000 was raised—\$12,000,000 by sale of debentures to two insurance companies, \$28,000,000 by arrangements for a stand-by credit from a group of banks, and \$9,000,000 by the sale of preferred stock. In August 1948 United sold 184,809 shares of common stock, netting the company nearly \$2,000,000. At June 30, 1948, three large domestic carriers, American, Northwest, and United, had preferred stock outstanding to the extent of 42, 35, and 12 percent of their capitalizations, respectively.

The relative importance of long-term debt in the capital structures of the domestic carriers is shown by the com-

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<sup>\*\*</sup> The underwriters experienced considerable difficulty in marketing this large issue of preferred stock. There was an offering earlier in the same year of 200,000 some shares of common, but the offering did not represent company financing; the shares were sold by the Aviation Corporation in compliance with a Board order to reduce its holdings in the carrier to not more than 4 percent.

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parison of the percentages of debt in their reported capitalizations of June 30, in the years 1945 to 1949, inclusive:

*Debt as a percentage of capitalization  
(at June 30, years 1945-49, inclusive)*

Carrier	1945	1946	1947	1948	1949
American	—	37	39	42	40
Braniff	—	—	39	48	38
Chicago and Southern	—	40	20	—	—
Capital	—	72	108	128	86
Colonial	—	21	—	11	2
Continental	—	—	30	20	36
Delta	—	—	16	12	30
Eastern	—	—	17	16	22
Inland	—	—	—	—	—
Mid-Continent	11	19	19	16	6
National	—	41	11	29	17
Northeast	—	20	—	15	32
Northwest	—	—	—	28	40
TWA	—	63	103	116	78
United	—	—	32	46	39
Western	20	3	5	49	40

\* As of September 30, 1949, in the case of Northwest.

TWA and Capital have, since the year 1946, had the highest ratio of debt to total capitalization. Like TWA, Capital ran into serious financial difficulties in the years 1946 and 1947, which were followed by major changes in management, large personnel lay-offs, and drastic cut-backs in prospective equipment purchases.

Except for TWA, the extent to which the various carriers relied on debt financing as a matter of deliberate choice does not appear of record. In the case of TWA, neither the Frye management nor Toolco nor its principal officers had a completely consistent philosophy with respect to the approximate amount of debt the carrier should carry. In the various proposals advanced by the Frye

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management the ratio of debt to equity varied, although Mr. Frye and Mr. Talman continued to stress the desirability of financing a substantial portion of the carrier's capital needs through the sale of common stock. It was only after their failure to obtain the continuing support of Mr. Dietrich and the consent of Mr. Hughes for any one of its several early proposals to finance that the Frye management made overtures for large loans from the RFC and the Export-Import Bank.

In the long discussions and negotiations between the Frye management and Toolco, as represented by Mr. Dietrich and/or Mr. Hughes, neither of the latter ever definitely foreclosed the possibility of raising a substantial amount of the necessary capital needs of TWA through the sale of common stock. However, in defending the large borrowings of TWA since the war, Mr. Hughes stated that he was definitely in favor of debt financing as a matter of policy under the circumstances existing since the end of the war.<sup>41</sup> Mr. Dietrich stated that he likewise held out

<sup>41</sup> In addition to Toolco's expressed fears of providing large capital funds to what it considered to be an improvident management, Mr. Hughes' specific grounds for such a policy are hereinafter recited. Whether Mr. Hughes was motivated by other considerations the record does not show. Conceivably Mr. Hughes might have considered using Toolco's limited common-stock investment in the carrier as a leverage to magnify Toolco's potential profits on stock held, since the expected return on the carrier's over-all investment would be, normally, substantially higher than the cost of borrowed funds, thereby accomplishing what is known as "trading on equity." There is no evidence, however, that this motivated Mr. Hughes' reluctance to agree to any one of the several of Mr. Frye's proposals for substantial equity financing; nor does the record show that Mr. Hughes wished to avoid possible dilution of Toolco's control of the carrier, since he consistently stood ready to have Toolco take up its pro rata share of any common stock to be offered. Certainly the record will not support public counsel's charge of sheer arbitrariness on the part of Mr. Hughes in dealing with the various plans of the Frye management for large-scale financing.

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for as much debt financing as might be available. Similarly, the present chairman of the board of directors of TWA, Warren Lee Pierson, indicated his preference for debt financing for air carriers.

Mr. Hughes stressed the low rates of interest at which debt financing could be accomplished and the tax advantage of financing by debt rather than the sale of capital stock.<sup>42</sup> Mr. Dietrich's preference for debt stemmed from his feeling that until TWA could have assessed its post-war capital needs fairly accurately it should not have attempted to raise a lot of money through the sale of common stock simply because the market was favorable, although he recognized that if a need for a substantial amount of new capital could have been satisfactorily demonstrated, the carrier's stock base of \$5,000,000 of \$5-par-value common stock during the years 1944-46 was far too low, and that the financing of all of the carrier's capital needs through debt would have resulted in an unbalanced capital structure. Mr. Pierson doubts the wisdom of selling the equity securities to finance the purchase of airplanes whose useful life is of such short duration. He stated in unequivocal language his preference for debt securities for

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<sup>42</sup> The following testimony summarizes his defense of debt financing as a matter of policy during the years 1945-46: " \* \* \* my position was that at that time debt financing was very attractive. Interest rates were low, and interest could be paid out of basic earnings before taxation. Equity financing, to leave a satisfied stockholder, probably should have returned something between seven and ten percent, and that would have been required to be paid out of earnings after taxation. So I think my position at this particular time was that I had to be convinced; or let me say I was not fully convinced that equity financing was desirable. In other words, if that financing could be obtained on proper terms, I was not fully convinced that debt financing might not be more desirable." (Tr. p. 116.)

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this type of financing,"<sup>43</sup> emphasizing that he felt that credit arrangements of the equipment-trust type, so widely used in the purchase of railroad equipment, should be utilized for the purchase of air transport equipment.<sup>44</sup> Both Toolco and TWA have taken the position that the sale of air carrier common stock to the general public at the high market prices which prevailed during 1945 and a portion of 1946 would be contrary to the policy, expressed in the Securities Act of 1933 and later the Securities Exchange Act of 1934, to protect the purchaser of securities against the vicissitudes of rising and falling financial markets. In other words, it is their contention that had TWA gone into the equity market at the time the market was most favorable and sold a substantial amount of common stock, that part of the public which purchased it would have suffered severe losses when the market for airline securities broke.<sup>45</sup> It is their further contention that the Board has an obligation to protect the investor in airline securities as part of its responsibility to the public interest.

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<sup>43</sup> "My testimony would be, Mr. Examiner, that as a matter of judgment, we did not go into the equity market." (Tr. pp. 61-62.)

<sup>44</sup> The use of the equipment trust to finance air carrier equipment was endorsed by both the President's Air Policy Commission and the Congressional Aviation Policy Board. See *Survival in the Air Age*, the report by the President's Air Policy Commission, issued January 1, 1948, pp. 116-118; and *National Aviation Policy*, 80th Congress, 2nd Session, Senate Report No. 949, pp. 25-26.

<sup>45</sup> "There seem to be feelings that at times it would have been a fine time for the aviation industry to have unloaded a lot of stock at high prices. I don't agree with that. I think it would have been unfortunate to have done so as far as TWA is concerned \* \* \* It is a shocking conception to unload securities on the widows and orphans simply to give a temporary aid to a company, and then have to live with it the rest of your life \* \* \*" (Testimony of Mr. Pierson, Tr. p. 66.)

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Respondents contend that on the question of debt against equity financing under the conditions which prevailed in the industry during the period here under review there should be no criticism of anyone who, as a matter of policy, decided to follow one route or the other. They pointed to the fact that TWA had successfully weathered its postwar difficulties; that it has been able to meet its debt service obligations; and that both its financial structures and earnings position have been improved.

Respondents also take considerable comfort from the fact that not only the air transport industry but American industry generally relied heavily upon debt financing in the period following the war. To demonstrate the extent to which American business has been financing recent expenditures in ways other than through the sale of stock and the reasons therefor, respondents submitted for the record the so-called McCabe report.\* This report discusses in scholarly fashion the question of debt and equity financing, and points out that stock financing by business corporations generally has been particularly low since the fall of 1946. The report states that new common-stock issues have averaged only about 10 percent of total new corporate security issues since that time. It goes on to state that since the fall of 1946 businesses had obtained funds for capital outlays primarily from bank and insurance company loans, and new bond issues and retained earnings, rather than from sales of stock on the market. Among other things, this report enumerates the various induce-

\* *The Equity Capital Situation*, a personal statement by Thomas B. McCabe, Chairman of the Board of Governors of the Federal Reserve System, prepared at the request of a Subcommittee of the Committee on Banking and Currency of the U. S. Senate. Submitted August 5, 1949.

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ments for business enterprises to finance their capital needs by means other than stock sales, including the high cost of equity capital, the low cost of debt, the availability of retained earnings, and the tax advantages of debt financing. The report also discusses the reasons for the failure of individual investors to buy more equity shares in American business, and expresses concern over the fact that the American people have shown a reluctance to buy stock, and that, as a result, the capital structures of corporate enterprises have in recent years been unduly expanded by means other than the issuance of equity capital. However, the report makes clear that in the interests of economic stability it is always better if both large and small enterprises finance more of their investment expenditures with equity and less with borrowed capital.

**CONCLUSIONS**

The basic question to be resolved in the present phase of this proceeding is whether the additional acquisition resulting from the letter agreement of January 8, 1947, is in the public interest. This controlling question of the public interest cannot be judged by any one single factor. Rather, it must be determined by the weighing of all the principal considerations disclosed by the evidence relating to the purposes and requirements of the Act. As indicated in the statement of issues in the forepart of this report, those considerations were framed during the prehearing conference as specific tests of the propriety of granting approval of the further acquisition. Evidence was adduced at the hearing with respect to those considerations by both respondents and by public counsel.

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There is not, however, in issue in the present phase of this proceeding any question relating to Toolco's 45-percent stock interest in the carrier previously approved by the Board, except insofar as the record may warrant a recommendation that further action with respect thereto be taken in further proceedings. Moreover, Toolco's plans and policies for the carrier between the time of the Board's original order of approval and the date of the letter agreement are relevant only insofar as the record of Toolco's past control properly indicates what action should be taken with respect to the substantive public-interest issue presently before us.

Respondents' brief discusses the principal events relating to Toolco's relationship with TWA both before and after the date of the letter agreement, and respondents contend that each of the several considerations analyzed therein is sufficient to support the affirmative conclusion that the additional acquisition should be approved as being in the public interest. The brief argues that collectively those considerations offer overwhelming compulsion to that conclusion.

Public counsel's brief likewise reviews the evidence of record in terms of several considerations bearing upon the propriety of approving the additional acquisition, but he concludes that the record herein raises serious doubt, whether the further acquisition should be approved, and whether any control by Toolco over TWA should be permitted to continue. His brief raises three possible alternatives as an answer to the ultimate question raised by this proceeding. As a first possible alternative, he appears to suggest that Toolco should not be permitted to solidify its control over the carrier as a result of the additional acquisition, but that some limitation be imposed on the exercise

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of the rights flowing from the additional stock which Toolco has acquired in the carrier as a result of, and since, the letter agreement. The import of this proposed alternative is not entirely clear but presumably it contemplates a trusteee of such stock for Toolco's benefit, subject to some condition that such stock remains nonvoting so long as it is in the hands of a trustee. Public counsel, however, dismisses this suggested alternative as being generally impractical and, for various reasons, undesirable. As a second possible alternative, public counsel suggests the possibility of rejecting approval of the additional acquisition, and reopening the proceeding under Docket No. 1182 for the purpose of determining whether or not all control of TWA by Toolco should be terminated. But public counsel appears to entertain serious doubt as to the Board's power to terminate a control previously approved.<sup>44</sup> As a third possible alternative, he suggests that the additional acquisition be approved but that Toolco's relationship with TWA, as portrayed by the record in this proceeding, be used by the Board as a case history for the purpose of demonstrating to Congress the need for public control of security issues by air carriers. Public counsel urges the examiner to recommend that the Board adopt this third suggested solution to the basic question posed by this proceeding.

Public counsel's condemnation of the manner of Toolco's control of TWA rests upon his contentions that Toolco

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<sup>44</sup> The examiner's disposition of the ultimate issue raised by this proceeding, as hereinafter set forth, makes it unnecessary to rule on the question of the Board's authority to reopen the proceeding under Docket No. 1182. It is to be noted, however, that both counsel for TWA in the proceeding under Docket No. 1182 and counsel for Toolco in the present proceeding have, in effect, conceded that the Board has jurisdiction to reopen.

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was directly and principally responsible for the carrier's present unbalanced capital structure, for its heavy burden of debt, and for such major financial disabilities as the carrier has experienced since the close of the war. These weaknesses in the carrier's financial structure are all alleged to have stemmed from the reluctance of Toolco to permit TWA to utilize equity financing when equity financing was feasible and advantageous.

Nowhere in public counsel's brief is there an affirmative recognition of any benefits which have accrued to the carrier as the result of having Toolco as its principal owner. That there have been such benefits, and that these benefits have been real and substantial, the record admits of no doubt. Nor will the record permit findings that Toolco alone is accountable for TWA's postwar difficulties, nor that its course of action with reference to the problem of financing the carrier was in all major respects inconsistent with the public interest.

In any candid accounting of Toolco's stewardship of the carrier since the Board's original approval of the control relationship, certain significant considerations affecting the public interest must be placed on the credit side of the ledger. At the outset, the record makes clear that there is no conflict of interest between Toolco's present or contemplated aeronautical activities and its control of an air carrier. On the contrary, the public interest favors Toolco's continued engagement in certain phases of aeronautics. It is of course a truism to state that any activities of benefit to the public are in the public interest. The contributions of Toolco's aircraft division and Mr. Hughes to the science of aeronautics, including their endeavors with respect to aircraft design instrumentation, aids to navigation, and

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their developmental activities in behalf of both the armed services and civil aviation, have been and no doubt will continue to be of considerable general benefit to the entire industry. Additionally, and of specific importance to TWA, have been the contributions of Toolco and Mr. Hughes in the way of financial support to the carrier, in the selection and purchase of its equipment, and their advice and guidance to the engineering and operations departments of the carrier.

Even before TWA's financial crisis of late 1946, the financial resources of Toolco were used to provide credit for the carrier. For example, the credit arrangements provided by Toolco made possible the placing of the original order for the Constellation airplane with the Lockheed Aircraft Corporation. There is little doubt that the Constellation would not have been developed as early as it had without the aid of Mr. Hughes and his company. In addition to the technical assistance from Mr. Hughes and his engineers in Toolco, the financial commitment which was necessary to undertake and continue the project could never have been made and met by TWA. Moreover, the Lockheed Aircraft Corporation has been a substantial beneficiary of those efforts. Thus, in addition to the development of air transportation which has been achieved through these efforts, the aircraft manufacturing industry has been developed and encouraged as well. However, the responsibility of Mr. Hughes and his company for the development of the Constellation did not end with the development of the specifications and financing of the original contract with Lockheed. The subsequent acquisition by TWA of practically every Constellation aircraft in the TWA fleet now and those on order has been accomplished directly or

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indirectly with the financial and technical assistance of Mr. Hughes and his company.

Among other contributions of Toolco and/or Mr. Hughes to the welfare and well-being of TWA, perhaps the most important have been the efforts at maintaining or improving the carrier's financial position following the war. Soon after the war ended Toolco obtained the commitment of Equitable for a loan of \$30,000,000, shortly thereafter raised to \$40,000,000, upon favorable interest terms, to finance the purchase of equipment and for other corporate purposes. While the examiner feels that the choice of this type of financing was unwise at that time, the formulation of a long-range postwar financial plan for TWA was complicated by serious differences between the carrier and its principal stockholder over the carrier's operating plans and policies. And, rightly or wrongly, Mr. Hughes had come to the conclusion that substantial debt financing was definitely to TWA's advantage. Barring unforeseen developments and the later need for considerably more capital than realized under the loans from Equitable, TWA's general financial condition appeared satisfactory at the time of the negotiations for the Equitable loans, and both Mr. Hughes and Mr. Dietrich were confident that the carrier could carry that much additional debt. It was not until November and December 1945 and the first part of 1946 that TWA ran into really serious losses, resulting primarily from the heavy expenses attending the inauguration of its international routes; except for a small profit in June of 1946, those losses continued and in fact became, for reasons already enumerated, even more aggravated during the remainder of that year.

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The letter agreement of January 8, 1947, under which Toolco agreed to purchase \$10,000,000 of the carrier's convertible notes saved TWA from utter financial failure in the darkest hour of its history. Thereafter, in December of 1947, in order to further improve the financial structure of the carrier, Toolco voluntarily agreed to waive all right to obtain repayment of this debt except through the issuance of stock in accordance with the terms of the notes. Then, in August of 1948, Toolco and Mr. Hughes further aided the financial structure of the company by effecting a conversion of the notes into stock at \$10 per share, notwithstanding the fact that conversion could not have been required by TWA until January 1, 1950.

Aside from the question of whether TWA should have done more equity financing, and should have had Toolco's cooperation in planning for it at a much earlier date, Toolco and Mr. Hughes were of assistance to the carrier in still other respects. As already noted, without the participation of Toolco, TWA would not have been able to secure an underwriting of the common stock it sold in February 1949. In August 1949, as previously explained, Toolco made the financing of the purchase of 20 new Constellations possible by entering into a commitment with the banks that, if as of December 31, 1949, the net worth of TWA had not been increased to \$20,000,000, Toolco would undertake to provide the amount of the deficiency. Since the close of the hearing herein, Toolco has aided TWA in purchase of other equipment. Moreover, Toolco's officers, particularly Mr. Hughes and Mr. Dietrich, have been generous in lending their services, time, and ability to the management of the carrier. Finally, TWA's improved operating results since the reorganization of the carrier in

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the early months of 1947 are in considerable part due to Toolco's leadership.

The foregoing is a summary of the assistance of Toolco and Mr. Hughes to TWA without regard to the question of whether substantially more equity financing could or should have been accomplished by TWA before or shortly after the close of the war. Certain of the assistance here examined, such as the development of the Constellation, the engineering and managerial help to the carrier, and much of the financial aid during that period, has been of unquestionable benefit to TWA. On the other hand, if Toolco and its principal officers can be held wholly accountable for the manner in which TWA was financed during the immediate postwar period, as urged by public counsel, then our appraisal here of Toolco's control of the carrier must be debited with what is an obvious detriment to the public interest. It is manifest that the carrier's present capitalization, in spite of its considerable recent improvement, is neither reasonable nor sound. Its proportion of debt to total capitalization is far too large. Its burden of both long-term loans and short-term obligations has affected, and very likely will continue to affect, its capacity to acquire new capital. It is impossible now for TWA to acquire through additional debt more aircraft without obtaining prior consents or waivers under various financial agreements it has entered into in the past. Indeed, TWA's recent acquisition of the six used Constellations under arrangements whereby they were initially acquired by Toolco and resold to TWA on a conditional sales basis was necessary because the carrier could not have purchased them directly without the specific consent of its principal creditors. This transaction is illustrative of the

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embarrassment which a debt-heavy capital structure can visit upon an air carrier.<sup>44</sup>

The examiner does not purport infallibly to hold that under all circumstances equity financing should be undertaken in preference to debt financing. Obviously, there may be occasion for borrowings on the part of air carriers. The condition of capital markets may at times make debt financing an unavoidable necessity; moreover, certain corporate needs, such as the acquisition of current assets or emergency equipment, may often be more advantageously financed through borrowings. However, the excessive use of debt and other senior securities is clearly undesirable. At the present stage of the industry's development, a sound and reasonable capitalization of an air carrier requires a heavy preponderance of common stock.

Local public-utility enterprises, such as electric power, telephone, and transit companies, as well as railroads, have historically relied heavily upon the issuance of debt to raise capital funds. But the financing of airlines raises special problems. It is, of course, elementary economics that the dependability and regularity of earnings is a prime consideration in determining the extent to which a public utility may issue debt securities. As in the case of other corporate enterprises, an air carrier's net earnings are the measure of its ability to meet fixed charges and earn a profit. Air-carrier operations, however, are char-

<sup>44</sup> TWA is perhaps more fortunate than another carrier driven to similar circumstances would be, since TWA's principal owner is one with substantial resources which have been consistently available to provide credit for the carrier. On the other hand, if public counsel's assessment of Toolco's responsibility for the TWA's failure properly to finance were taken as correct, it could be argued that Toolco had a bounden duty to come to the financial rescue of the carrier in the closing months of 1946 and thereafter.

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acterized by typically high operating ratios,<sup>40</sup> leaving a relatively small margin for nonoperating expenses (including capital charges) and for profits. As a result, unless fluctuations in operating revenues are accompanied by proportionate trends in costs, small reductions in gross revenues may produce serious declines in net earnings. Although airline managements are demonstrating increasing control over costs, air-carrier costs are not always susceptible to easy or rapid adjustment in the event of drastic declines in traffic volumes. On the other hand, air traffic volumes have been unusually sensitive to fluctuation: bad weather, a series of accidents, technical difficulties with new aircraft, and cyclical changes in the business, are capable of creating substantial but unpredictable declines in demand for air transportation. An air carrier's capacity to meet expenses in the face of receding revenues is made much more difficult, of course, if heavy fixed charges in the form of interest and amortization payments on outstanding loans must also be met. Moreover, the rapid obsolescence of equipment deprives the industry of that more permanent and constant property base so characteristic of power, transit, and telephone utilities. And the dangers of financing equipment purchases through debentures, or other forms of debt whose maturities may outlast the life of the assets thereby acquired, are obvious.

<sup>40</sup> Ratio of operating expenses to operating revenues. For the calendar years 1947, 1948, and 1949, the domestic trunk lines' operating expenses were 105.9, 99.5, and 94.6 percent, respectively, of their operating revenues. TWA's operating ratios for the same years were 109.6, 98.9, and 95.9 percent, respectively. In each case, the percentage of operating expenses to operating revenues is inclusive of revenues derived from mail pay.

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There is no doubt that the air transport industry should have made more extensive use of equity financing in raising new capital for postwar needs. Indeed, it may reasonably be asserted that a sound capitalization for air transport companies at the present stage of the industry's development is one composed almost exclusively of equity stock. Because of the uncertainty of the continued net-revenue-producing power of an air carrier's assets, a substantial burden of debt is likely to cause financial embarrassment. Adversity in a carrier's earning position, either for the lack of sufficient gross revenues or ready ability to reduce operating expenses, may force the danger of failure to meet fixed charges and/or debt maturities. TWA found itself precisely in that predicament since the close of the war. Improvement in its revenue-producing capacity, achieved through better control over costs, larger traffic volumes, and some increased mail compensation, and a considerable restoration in its investment position, achieved largely through the assistance of Toolco has, however, enabled TWA to meet all its obligations.

A conservative capitalization for an enterprise operating under as narrow a profit margin as an airline, and subject to what have historically been the air transport industry's changing fortunes, requires the capital cushion provided by an adequate common-stock equity. The assets represented by common stock shares provide a margin of safety for a corporation's earnings and for such assets as may be represented by a corporation's senior obligations.\*

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\* For a more complete exposition of the common-stock cushion principle, see Barnes, *The Economics of Public Utility Regulation*, pp. 728-729, and the S. E. C. cases therein cited.

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Obviously, the larger the common-stock investment in a carrier's capital structure, the greater the margin of financial safety and the less the risk of financial failure in the event of a serious recession in business.

The foregoing considerations cannot be brushed aside as delicate distinctions of financing theory. They are matters of substantial practical importance to both the industry and the Board. As already noted, the certificated trunk-line carriers emerged from the war period with relatively sound capital structures. The high earnings of the war years enabled most of them to retire outstanding indebtedness. Several of the carriers were able to garner considerable cash reserves. The war ended with a very favorable market for airline stocks. Yet the history of airline financing since the end of the war shows unwarranted reliance on borrowings as means of financing capital needs. The crisis in airline finance during the years 1946 and 1947 was unquestionably aggravated by service charges and repayment requirements on extensive borrowings.

This is not to imply that all of the trunk-line carriers failed to utilize equity financing to acquire capital funds for postwar needs. As previously noted, eight of the trunk-line carriers marketed common stock in years from 1944 through 1947, inclusive,<sup>51</sup> although for the most part in inadequate amounts. However, it is significant that the carriers which found themselves in most serious financial difficulties during the 1946-47 crisis in civil aviation, such as Capital and TWA, were among the carriers which failed to do any equity financing at all during that period.

It will no doubt be contended that a more liberal mail-pay policy on the part of the Board during and imme-

<sup>51</sup> Excluding Capital's sale of common stock in May 1944, involving the conversion of the outstanding preferred stock.

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diate following the war would have helped to avoid the industry's postwar difficulties. On the other hand, it can be reasonably asserted that but for the subsidy provisions of the Civil Aeronautics Act individual carriers would have developed more conservative capital structures. It is certainly doubtful whether the lending institutions which obliged the carriers with credit arrangements in recent years would have been willing to risk the substantial funds lent in the absence of the so-called "need" mail-pay provisions of the Act.

The examiner intends no implication that the financial support to the industry required by the Act has been, or is, unwise or unnecessary. But the industry's capacity to maintain its credit and raise new capital depends upon more than a fair and adequate mail-pay policy. It depends to a major extent upon the promise of present and prospective nonmail earnings and the maintenance of reasonable capitalizations. The use of excessive debt will inevitably impair a carrier's capacity to meet current and continuing capital needs, or to obtain such needs at reasonable cost, thereby depriving it of the very means necessary to serve economically and efficiently new and expanding markets. As a result, the carrier may find itself in the straight jacket of excessive debt and faced with the alternative of postponing desirable new investments or issuing even more debt. Except for the financial assistance it has received from Toolco and Mr. Hughes, and increased temporary mail payments, TWA would, in all probability, have been forced to the wall in the early months of 1947.<sup>22</sup>

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<sup>22</sup> Whether a sounder and more simplified corporate structure would have been followed had the carrier been left to receivership and reorganization is, of course, a matter of speculation.

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However, the extent to which Toolco and its principal officers can be held directly or principally responsible for TWA's present capital structure poses a most difficult problem. Rarely, if ever, are the principal owners of an enterprise entirely free to formulate a financial plan. Numerous factors, including, among others, the probable amount of new funds needed, the state of the securities' market, the time and cost involved in floating publicly or privately offered issues, and the necessary cooperation between a corporation's management and its proprietors, all operate to complicate and often delay agreement on a financial plan. In the situation under review here, though the general amount of TWA's capital requirements for its domestic operations was ascertainable before the war ended, the carrier could not have been expected to have raised the new capital needed for its international services until after it received notification of the Board's award thereof in July 1945. Moreover, Toolco was working with a management which it inherited when it bought into TWA, and with which it was at odds on matters of high operating policy for the carrier. And while the market was very favorable to equity financing near (and immediately after) the close of the war, the air transport industry, with industry generally, was faced with the practical problem of weighing the advantages of financing through means other than the sale of common stock. In addition to such inducements as continuing tax advantages of debt financing, and the higher cost of equity capital, both in terms of promotion and expected yields on the part of investors, it was necessary to decide whether, in spite of the high favor in which airline stocks were then held, the market would absorb the very substantial offerings required to

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raise all needed capital requirements through common-stock sales, whether the market would continue favorable through the considerable period of time required by large-scale underwriting, and whether, if common-stock financing was to be used exclusively, it might not be wiser to wait for an even greater appreciation in common-stock prices.

The record shows that since the close of the war American business has financed new capital outlays largely through debt and the retention of past earnings. In spite of continuing high earnings and substantial inflationary pressures, the market for industrial stocks has been relatively dull and erratic. While the market for airline stocks has been very favorable during a considerable part of the period under review here, both in terms of dividends and earnings, and particularly so relative to book values, the years of 1944 and 1945 were years of war, with war's attendant uncertainties. Following the war's end, the air transport industry had less than a year in which to undertake equity financing before the market break in mid-1946 put a damper on the sale of airline stocks.

Nevertheless, a number of the carriers were successful in raising equity capital before the break in the market for airline stocks, notably Pan American's 43-million-dollar stock issue just before the war ended, although most of the capital necessary for the industry's postwar needs was raised through borrowings. Had the Frye management and Toolco's officials, including Mr. Hughes, been able to agree on a financing plan before the war ended, there is nothing in the record to indicate that TWA could not have successfully marketed common stock in substantial volume before the market broke about mid-1946.

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It is true that during the entire period following the Board's original approval of the Toolco-TWA relationship, and up to the time of TWA's financial difficulties in late 1946, there were constant negotiations between the officials of Toolco and the management of TWA in an effort to accomplish a substantial measure of permanent financing. These negotiations finally bore fruit in the tentative agreements arrived at in Los Angeles meetings in June and August 1946, which would have raised approximately 100 million dollars in capital funds. These proposals failed of consummation primarily because the bankers apparently feared the market would not absorb the large offering of common stock involved. That their fears were not unjustified is evidenced by the fact that American's offering of 40 million in preferred stock was marketed only with considerable difficulty as early as June 1946, when the market for airline stocks began weakening.

But whatever were TWA's problems in promoting equity financing to meet its postwar capital needs, the insistence of Mr. Hughes and Mr. Dietrich on debt as a matter of deliberate policy to meet TWA's capital requirements right after the war ended must be condemned. Had such an attitude persisted, there would have been small hope of improving the carrier's faulty capitalization. Fortunately, both Mr. Hughes and Mr. Dietrich have been aware of the dangers of operating a carrier that may eventually need as much as 100 million dollars or more in invested capital with the relatively small common-stock capital base that TWA had at the time of its financial troubles in late 1946. They stood ready to commit Toolco to the substantial amount of equity financing involved in the program tentatively agreed upon at Los Angeles in the summer of

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1946. Moreover, Toolco's recent agreement to convert the \$10,000,000 loan evidenced by the letter agreement of January 8, 1947, into common stock, and its commitment to take up its pro rata portion of the large amount of common stock offered for sale by TWA in February 1949, have contributed considerably to the restoration of the carrier to a sounder capital structure.

Respondents' concern about the investors who may have purchased common stock in an air carrier at the time when the market for airline stocks was bullish, and who may have suffered losses when the market broke, hardly requires comment. Their solicitude for the "widows and orphans" who may have then bought airline stocks after the war is touching, to say the least; but they furnish no figures on the extent to which airline shares were then sold to that part of the investing public. The fact remains that the purchaser of common stock is the ultimate risk taker; in other words, the stock buyer is the real entrepreneur who, under our system of enterprise, stands either to gain or lose, depending upon the fortunes of the business he chooses to invest in. It would appear that respondents should show equal or—perhaps even greater—concern for those investors who, having already bought into an air carrier, stand to lose all should the carrier's excessive debt result in financial failure.

The measure of Toolco's responsibility on the single and narrow issue of equity vs. debt financing for TWA must be weighed against the contributions and value of Mr. Hughes and his company to the carrier. On balance, it must be concluded that the increased interest in TWA by Toolco is in the public interest, and that the further acquisition of control resulting from the letter agreement

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of January 8, 1947, should be approved. Testing the propriety of approving the additional acquisition by weighing the net effect of Toolco's actions and policies with respect to TWA for the period since October 1944, the record requires a finding that Toolco's 45-percent control of TWA has been of substantial advantage not only to that carrier but to the industry as a whole. The beneficial nature of Toolco's control is demonstrated by the numerous instances of material and managerial assistance to TWA by Toolco and Mr. Hughes, particularly the manner in which Mr. Hughes and his company rallied to the support of the carrier during the financial crisis of late 1946 and early 1947.

At the time the Board first considered the application of Toolco for approval of control of the carrier under Docket No. 1182, it was the opinion of Mr. Frye, who was then president of TWA, that the interest of commercial air transportation as a whole, as well as the interest of TWA in particular, would be furthered by the association of Mr. Hughes with the carrier, since through such an association a portion of Mr. Hughes' time and his unusual talents in the field of aeronautics would be available for the development of airline equipment and the improvement of airline operations. Except for his differences with Mr. Hughes over the manner in which the carrier should have accomplished its financing for the postwar period, Mr. Frye is still of the opinion that the relationship of Mr. Hughes and his company to TWA is one of substantial public benefit to both the carrier and the industry.

While the examiner is of the conviction that Toolco officials, including Mr. Hughes, erred in not doing more to come to terms with the Frye management for the purpose

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of promoting a substantial measure of equity financing before or immediately after the end of the late war, the record will not support a finding that failure of Mr. Hughes and his company in that regard alone makes Toolco's control of TWA inconsistent with the public interest. The policy followed by Toolco and Mr. Hughes was part of the general pattern of financing followed by most of the airline industry and, indeed, of American business generally. Moreover, the many instances of Toolco's assistance to the carrier have been of undoubted public benefit. It is also to be noted that no question has been raised during this proceeding concerning TWA's capacity to serve adequately all of its existing routes or its ability to extend its services to meet the requirements of the traveling public. Finally, TWA occupies a very important place in this country's domestic and international air transportation system. It is in the public interest to make and keep it a strong carrier to the end that it can continue effectively to serve the traveling public and effectively maintain its competitive position among our large carriers. TWA's failure to finance properly was part of industry's failure to do likewise, and that failure was but one of several failures of foresight which almost laid the industry low in the period of readjustment after the war. With Toolco's help, TWA's earnings position has recovered and its investment position is on the way to recovery. The continued interest of Toolco in TWA appears essential to the best interests of the carrier and the public. Accordingly, in the light of the record in this case and in recognition of the meaning of public interest as set forth in section 2 of the Act, the examiner finds that the additional control acquired by Toolco as a result of the letter agreement of January 8, 1947, is consistent with the public interest.

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As hereinbefore noted, public counsel requests the examiner to recommend to the Board that this proceeding be used as a case history to show the need for Board control over the capital financing of air carriers. The examiner is convinced of the urgent need of public control of airline security issues to assure sounder airline financing. The principal objective of regulatory control over airline capital structures is the maintenance of sound airline credit. Unless a number of airline capitalizations are improved and maintained on a more conservative basis, with greater proportionality in junior securities, the industry will continue to be plagued with difficulties in financing the full development of air transportation. Further, for reasons which hardly need amplification here, the Board's efforts at effective regulation of the industry, particularly the promotion of economically sufficient air carriers, are seriously handicapped by the lack of Board authority to prevent unsound airline financing and the uneconomic consequences thereof. However, the Board is already on record with the Congress with respect to the problem and the purposes of effective public-security regulation. In its annual report for the year 1942, the Board recommended an amendment of the Act granting it control over the security issues and the capital structures of air carriers. The Board urged that the effective discharge of its powers to regulate the economic phases of air transportation required surveillance of airline financing to prevent the development of unusual capital structures.<sup>\*\*</sup> Public counsel's request that the history of finan-

<sup>\*\*</sup>"The Act should be amended to require the Board's approval of the issuance of securities or the assumption of obligations or liabilities by air carriers. No effective control over this subject is now authorized by law. Such lack of control constitutes a marked

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cial difficulties of TWA as they developed during the postwar period be used as a case history by the Board in underscoring the need for regulatory supervision of airline security issues and capitalizations would be manifestly unfair to that carrier. Other carriers followed a similar financial policy during the postwar period, and several suffered financial disabilities almost as serious as those experienced by TWA. Under the circumstances, the Board ought to use the experience of the entire industry in support of its recommendations to the Congress on this matter.

In view of the foregoing, and upon the basis of all evidence of record, the examiner finds that Toolco's further acquisition of control over TWA resulting from the letter agreement of January 8, 1947, is in the public interest, and otherwise meets the requirements of section 408 (b) of the Act.\* It is therefore recommended that—

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departure from other statutes regulating public utilities and common carriers where the need for Government control of security issues is almost universally recognized. The effective discharge of the Board's powers to regulate the economic phases of air transportation, which require the prevention of economically unsound capital structures, clearly requires that the Board be given power and responsibility to supervise, in the public interest, the development of the capital structures of the air carriers." *Annual Report of the Civil Aeronautics Board, 1943*, p. 14. The Board has renewed its recommendation for authority from Congress to control the issuance of securities by air carriers in its annual reports for the years 1943, 1944, 1945, 1946, 1947, 1948, and 1949, at pages 6, 9, 16, 21, 29, 38, and 43, respectively, of said annual reports.

\* There is no occasion to be concerned here with the provision of section 408 (b) against the creation of monopolies contrary to the public interest by an acquisition of control of an air carrier. Toolco does not control any other air carrier. Its interest in aeronautics is limited to the activities hereinbefore described.

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1. The Board approve the further acquisition of control which resulted from the transactions evidenced by aforesaid letter agreement of January 8, 1947, subject to the same conditions imposed by the Board in its approval of October 17, 1944, of the Toolco-TWA relationship under Docket No. 1182. (6 C. A. B. 153, 158.)
2. That the proceeding instituted by the Board by order serial No. E-289, dated February 7, 1947, be terminated.

## APPENDIX No. 1

"Big Four" carriers—portion of total operating expenses (including depreciation) per standard available ton-mile and per standard revenue ton-mile quarter ended, end 12 months ended, as indicated

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Quarter ended—	Cents per standard available ton-mile				United	TWA	Eastern	American	Cents per standard revenue ton-mile (passenger @ 190 lbs.)	United
	American	Boston	TWA	United						
12-31-45	—	—	—	—	—	—	—	—	39.97	60.48
3-31-46	38.96	32.06	43.38	38.70	50.50	50.50	50.50	50.50	49.55	49.55
6-30-46	35.12	28.81	35.32	29.04	46.13	37.95	48.72	40.31	40.31	40.31
9-30-46	32.44	27.44	46.92	29.63	43.29	39.13	60.42	40.99	40.99	40.99
12-31-46	31.66	25.76	47.87	34.27	45.98	41.01	75.50	51.52	51.52	51.52
3-31-47	34.56	27.67	36.22	38.49	58.07	42.79	68.32	63.29	63.29	63.29
6-30-47	31.19	29.18	31.27	32.92	46.75	46.06	51.01	48.18	48.18	48.18
9-30-47	26.76	27.76	28.41	27.34	45.82	58.48	50.38	44.10	44.10	44.10
12-31-47	33.88	27.64	32.46	31.48	57.22	55.85	56.97	53.16	53.16	53.16
3-31-48	36.75	28.33	32.10	35.89	66.19	50.99	60.08	62.71	62.71	62.71
6-30-48	27.04	29.82	30.74	29.21	53.33	55.06	54.79	49.72	49.72	49.72
9-30-48	24.46	29.11	27.26	27.88	52.34	59.38	55.68	52.04	52.04	52.04
12-31-48	26.04	29.38	26.89	30.36	49.44	60.28	58.55	57.74	57.74	57.74
3-31-49	25.94	27.76	26.87	31.47	52.36	53.31	66.35	61.91	61.91	61.91
6-30-49	24.49	28.14	25.59	26.97	44.14	56.06	47.84	46.85	46.85	46.85
9-30-49	23.36	27.96	24.66	24.96	44.60	60.76	47.59	43.79	43.79	43.79
12-31-49	25.39	26.63	27.43	27.16	48.21	58.15	53.06	52.04	52.04	52.04

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## APPENDIX No. 1 (Continued)

"Big Four" carriers—comparisons of total operating expenses (including depreciation) per standard ton-mile and per standard revenue ton-mile quarter ended, and 12 months ended, as indicated

Quarter ended—	Cents per standard available ton-mile					Cents per standard revenue ton-mile (passenger @ 190 lbs.)			
	American	Eastern	TWA	United	American	Eastern	TWA	United	
<u>12 months ended—</u>									
12-31-45	35.71	29.81	38.78	34.31	41.95	36.67	44.44	38.89	
3-31-46	36.59	30.63	39.92	35.07	44.21	37.97	48.34	41.62	
6-30-46	36.71	30.48	38.90	33.26	46.19	37.12	50.35	42.38	
9-30-46	35.78	29.93	40.50	32.12	46.48	39.60	55.10	43.35	
12-31-46	33.82	27.96	42.74	31.96	46.03	39.58	59.38	45.09	
3-31-47	33.25	27.27	40.89	32.76	47.88	40.35	60.98	49.13	
6-30-47	32.38	27.49	39.37	33.12	47.95	42.27	61.81	50.01	
9-30-47	30.75	27.58	34.02	32.54	48.55	46.63	58.51	50.58	
12-31-47	31.29	28.01	31.72	31.89	51.42	50.63	55.54	50.99	
3-31-48	31.66	28.17	31.01	31.41	52.70	52.65	54.46	50.83	
6-30-48	30.38	28.41	30.89	30.46	54.50	54.79	55.39	51.18	
9-30-48	29.39	28.71	30.43	30.48	56.39	55.09	56.76	53.57	
12-31-48	27.55	29.15	28.99	30.24	54.23	56.14	57.17	54.73	
3-31-49	25.81	28.98	28.33	29.62	51.83	56.77	58.50	54.89	
6-30-49	25.18	28.55	27.11	29.02	49.30	57.03	56.29	53.96	
9-30-49	24.89	28.23	26.41	28.19	47.30	57.39	54.00	51.49	
12-31-49	24.74	27.61	26.52	27.40	47.01	56.54	52.71	50.16	

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## APPENDIX No. 2

*Comparison of total operating expenses including depreciation, per revenue ton-mile<sup>1</sup> quarters ended, and 12 months ended as indicated*

	American Overseas	Pan American— Atlantic	TWA—Inter- national
<b>Quarter ended—</b>			
12-31-45 *			
3-31-46	120.11	91.79	193.16
6-30-46	89.63	88.86	116.32
9-30-46	80.02	138.33	125.68
12-31-46	131.29	144.72	203.75
3-31-47	150.86	127.28	135.04
6-30-47	81.96	73.41	87.53
9-30-47	81.42	82.22	78.86
12-31-47	119.40	107.80	121.33
3-31-48	142.84	127.07	128.86
6-30-48	86.92	90.86	109.18
9-30-48	69.14	82.85	88.87
12-31-48	76.73	94.27	92.06
3-31-49	99.75	105.83	104.01
6-30-49	84.88	102.66	85.22
9-30-49	85.88	99.71	81.88
12-31-49	104.17	101.81	90.02
<b>Year ended—</b>			
12-31-45 *			
3-31-46	* 144.15	125.52	* 196.61
6-30-46	113.86	105.59	129.53
9-30-46	95.34	111.41	127.70
12-31-46	102.53	116.91	145.70
3-31-47	110.46	123.64	140.55
6-30-47	108.87	109.77	126.18
9-30-47	101.18	96.68	107.78
12-31-47	98.38	98.07	100.18
3-31-48	97.24	94.99	100.54
6-30-48	99.31	99.55	106.01
9-30-48	94.20	99.39	108.54
12-31-48	85.22	95.97	101.26
3-31-49	81.10	92.71	97.60
6-30-49	80.80	95.85	91.22
9-30-49	85.79	100.42	89.18
12-31-49	92.81	102.22	89.10

<sup>1</sup> Does not include revenue ton-miles flown in nonscheduled operations for periods prior to January 1, 1947.

\* Not available.

\* Revenue ton-miles flown during the period April 1-June 30, 1945, are estimated.

[3949]

Order No E-16195

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.  
on the 29th day of December, 1960

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[C A P T I O N ]

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Docket 1182  
Docket 2796

ORDER GRANTING EXEMPTION AND APPROVING  
INTERLOCKING RELATIONSHIP

By motion filed December 23, 1960, Trans World Airlines, Inc. (TWA), to the extent legally necessary, requests modification of Order 3210,<sup>1</sup> as amended and modified by subsequent orders, which restricts commercial [3950] transactions between TWA and Hughes Tool Co. (Toolco) and between TWA and any subsidiary or affiliate of Toolco to a maximum of \$200 each and an aggregate annual expenditure in such transactions of \$10,000. Approval, under section 408, is also requested, if necessary, for the transactions contemplated under the financing plan. Similarly sought is

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<sup>1</sup> 6 CAB 153 (Docket 1182).

*CAB Orders.*

approval, to the extent necessary, under section 409 of the Act, of the interlocking relationships arising out of the designation of Raymond M. Holliday, as a representative of Toolco, and of Ernest R. Breech and Irving S. Olds as representatives of the banks and institutional investors, to serve as Voting Trustees under a Voting Trust set up for the Toolco-TWA stock.

The TWA motion herein is the culmination of a series of previously considered motions<sup>2</sup> designed to facilitate the refinancing of TWA's obligations and to provide for its acquisition of jet aircraft<sup>3</sup> and related engines and parts. The prior motions were granted by the Board in Order E-15430, June 23, 1960 and Order E-15561, July 21, 1960 which, among other things, gave general approval, under section 408 of the Act and in accordance with the provisions of Order 3210, to a refinancing plan for TWA of approximately \$260,000,000 involving the participation of banks, insurance companies and Toolco. The present application presents a recasting of the original plan, which in its present form, accomplishes a significant modification of Toolco control of TWA.

The plan designed to finance the cost of the "Jet Flight Equipment Program" of TWA provides for (a) the delivery of \$72,200,000 principal amount of 6% Equipment Mortgage Serial Notes of TWA, maturing serially on December 31, 1961, and quarterly thereafter through December 31, 1964;<sup>4</sup> (b) the issuance of \$92,800,000 principal amount of 6½% Equipment Mortgage Sinking Fund Notes of TWA, due December 31, 1972;<sup>5</sup> and (c) the issuance of

<sup>2</sup> The motions were filed April 1, 1960, April 14, 1960, May 6, 1960 (considered in Order E-15430, June 23, 1960), and July 1, 1960 (considered in Order E-15561, July 21, 1960).

<sup>3</sup> Boeing 707's and Convair 880's.

<sup>4</sup> The "December 1960 Loan Agreement" with Banks.

<sup>5</sup> The "Note Purchase Agreements" with Insurance Companies.

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\$100,000,000 principal amount of interim subordinated promissory notes of TWA to Toolco in payment *pro tanto* of the amounts owing by TWA to Toolco at an interest rate not exceeding 7% to mature not earlier than June 30, 1973.

In conjunction with the plan, TWA and Toolco provide for a "Final Accounting and Debenture Purchase Agreement." Under its terms Toolco will transfer title to aircraft, engines and parts to TWA and assign its rights in contracts to acquire such jet flight equipment. Upon the settlement of account of obligations to Toolco, TWA will pay Toolco cash in the amount of \$54,892,499.35; \$100,000,000 in Interim Subordinated Notes with interest at 6½%; and an additional cash payment of \$1,068,356.52, representing accrued interest on subordinated obligations. In addition, TWA agrees to [3951] make a subscription offer<sup>\*</sup> to holders of common stock for an aggregate of not less than \$100,000,000 and not more than \$112,000,000 subordinated debentures with detachable warrant rights for the acquisition of common stock.<sup>†</sup> Under the "Hughes Financing and Subordination Agreement",<sup>‡</sup> Toolco will acquire all the subordinated debentures not subscribed to by the remaining stockholders.<sup>§</sup> The issuance of the Subordinated Debentures will provide TWA the means for refunding the Interim Subordinated Notes in the sum of \$100,000,000 issued to Toolco by the resulting cash proceeds or by exchange of

\* On or before May 31, 1961.

<sup>†</sup> The terms of the debentures and of any stock warrants attached thereto will conform to the recommendations of a special committee appointed for that purpose by and from TWA's investment banking firms. For each \$100 of subordinated debentures, the holder shall receive the right to purchase not more than 4 shares of TWA common. The maturity of the debentures may be as late as June 30, 1978.

<sup>‡</sup> This agreement is among TWA, Toolco, Irving Trust Company (as Bank Agent), the Institutional Investors, and the Chemical Bank New York Trust Company, as Trustee under the Indenture of Mortgage.

<sup>§</sup> Toolco may not be called upon to purchase more than \$100,000,000 worth.

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Subordinated Debentures for Interim Subordinated Notes held by Toolco. As a result, the stock interest of Toolco in TWA, now 78%, may be increased.

Under the terms of the "Hughes Financing and Subordination Agreement," Toolco will provide a revolving credit of \$50,000,000 in favor of TWA for the period expiring upon the acquisition of the last of 20 Convair 880's which TWA has the right to acquire under the Jet Flight Equipment Program. In addition, Toolco is obligated to lend TWA any sum necessary to insure a net working capital of \$10,000,000 until acquisition of the last of the Convair 880's.<sup>10</sup>

Most significantly the financing plan provides measures of assurance regarding the management policies of TWA during the period the securities are outstanding. This is accomplished by a "Voting Trust Agreement,"<sup>11</sup> an "Option Agreement,"<sup>12</sup> and the "Noteholder's Agreement."<sup>13</sup> These agreements provide for a voting trust in respect of TWA stock now held by [3952] Toolco,<sup>14</sup> or thereafter acquired during the life of the trust. The Voting Trust will remain in effect until December 15, 1970, unless previously terminated or extended as provided therein. Toolco, under its right to designate one of the three Voting Trustees has appointed Raymond M. Holliday, a director of TWA. The Notes Agent, acting for the investors, designated the other

<sup>10</sup> TWA will issue subordinated notes for this obligation. Toolco's obligation to provide the net working capital shall cease if the outstanding subordinated notes equals \$50,000,000. Repayment of the subordinated notes, during the period specified, is to be made out of any excess over the required working capital.

<sup>11</sup> This agreement is among TWA, the Voting Trustees and Toolco.

<sup>12</sup> This agreement is among Irving Trust Company (as Bank Agent), The Equitable Life Assurance Society of the United States and Metropolitan Life Insurance Company (the Institutional Investors) and Toolco.

<sup>13</sup> This agreement is among Irving Trust Company (as Bank Agent), the Institutional Investors and Irving Trust Company (as Note Agent).

<sup>14</sup> Now amounting to 5,231,301 shares of TWA stock.

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two Voting Trustees. The Voting Trustees, acting by majority vote, are empowered to exercise their sole and absolute discretion in respect of the TWA stock deposited with them and will accordingly be in control over TWA management and policies. The Voting Trustees, under the trust, may also act as directors or officers of TWA and may engage in transactions with TWA.<sup>15</sup> Compensation for the services of the Voting Trustees is to be paid by Toolco.

Under the terms of the Option Agreement, Toolco is granted the non-transferable right and option, at any time after December 31, 1961, to purchase any outstanding Serial Notes by payment in full, and by payment in full of the outstanding Sinking Fund Notes plus a premium of 22% until March 31, 1962. The amount of the premium is thereafter reduced at the rate of  $\frac{1}{2}$  of 1% for each elapsed quarterly period of three months.

Upon the Board's grant of the requested modification of the limitations of Order 3210, and the consummation of the refinancing plan, a significant and fundamental change will have been accomplished in the control of TWA by Toolco. Upon the execution of the Voting Trust, the Toolco control of TWA will change drastically in both form and substance. No longer will the directors of Toolco be free to enforce their dictates or those of Toolco's controlling shareholder on TWA. Only one of the three voting trustees will represent directly these interests. Two of the voting trustees, selected by the financial institutions, will be independent of Toolco and of Mr. Hughes.

The voting trustees will not be restricted in their power to approve further financing for TWA, nor in their ability to sell, lease, transfer, hypothecate or otherwise dispose of, or manage TWA's assets. In short, their power to control

<sup>15</sup> Any approval herein of the plan of financing shall not, unless specifically so provided, be construed as an approval of any personal transactions between the individual Trustees and TWA assuming such approval by the Board should be required under the Act.

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TWA is as plenary as that of Toolco and its controlling shareholder.

We are advised that it was the insistence of the financial institutions upon the establishment and terms of the voting trust and of the conditions for its dissolution which have been the major stumbling block in recent weeks to the consummation of TWA's initial jet financing program.<sup>10</sup> We [3953] have not been told officially of the reasons which motivated the decision of the insurance companies and banks to seek this protection. However, we have not been unaware of TWA's problems.

For example, it is a matter of public record that TWA's major competitors arranged the financing for their jet fleets at a significantly earlier date than did TWA. The impact of this fact may be indeed far-reaching. This may have meant that those carriers obtained their financing at a time when funds could be raised on relatively more attractive terms. In any event, it is clear that TWA will pay substantially higher interest rates for its funds than its major competitors. The fact that this disparity in debt burden can play a significant part in the competitive picture is certainly clear.

Moreover, it is probable that the delay in arranging financing has also prevented TWA from securing delivery of a substantially large portion of the jet fleet which was ordered on its behalf. Thus, TWA was unable to take delivery of the twenty Convair 880's, most of which have been available for the past several months. It appears that the failure to receive this equipment as planned may have played a substantial part in TWA's recent inability to maintain its traffic position relative to its principal competitors. Thus, we note, for example, that the carrier's preliminary

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<sup>10</sup> TWA has arranged for the acquisition of 47 jet aircraft. Comparable carriers have acquired, or are in process of acquiring, jet fleets in the neighborhood of twice this size.

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traffic reports for the month of November 1960 show that TWA's share of the Big Four domestic passenger market has declined from 23.0 to 20.2 per cent. By way of contrast, United, which was behind TWA, has caught and passed it, increasing its share from 21.3 per cent to 29.0 per cent.<sup>17</sup> It appears to be significant that TWA's major competitors have already taken delivery of much larger jet fleets than TWA is operating and have firm orders for delivery of more.<sup>18</sup>

**[3954]** Under these circumstances, we think it clear that Board action to facilitate TWA's acquisition of jet equipment is in the public interest. At the same time, however, it is evident that Toolco's control of TWA, as exercised through Hughes, has presented substantial problems requiring the Board's attention.

In short, and without further description of these problems, the Board wishes to make clear the fact that it would anticipate the proper filing of an application under section 406 of the Act and the obtaining of the approval of the Board before Toolco would attempt to reassume control over TWA.<sup>19</sup> It is clear that such approval would not be

<sup>17</sup> American suffered a much less severe decline from 32.0 to 30.5 per cent.

<sup>18</sup> Apart from the impact on relative traffic position, there are other respects in which TWA may have been adversely affected by the delays in financing and in the delivery of the Convairs. Thus, the delay may have created increased cost of jet crew qualification both in terms of retraining expense and in keeping such crews available pending delivery. (Such crews cannot be used interchangeably in piston equipment; therefore, the crews which have been qualified in Convairs have presumably not been employed in TWA's revenue service.) At least one of the aircraft has suffered from exposure. The cost of restoring the aircraft to operable condition may be sought to be imposed on TWA.

<sup>19</sup> The Option Agreement requires Toolco, in exercising the option, to provide a satisfactory opinion of counsel that the exercise of the option, by purchase of the notes, does not require governmental or regulatory approval or that such approval has been granted and is in force. No such provision could, of course, preclude dissolution of the voting trust after the ten-year term has expired. Nonetheless, it is clear that Toolco should not resume direct control at that time unless prior approval of the Board is sought and obtained.

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forthcoming without a searching inquiry into the public interest factors affecting this control.<sup>20</sup>

We turn now to a consideration of the specific transactions and relationships upon which we must act. The applicants seek either a disclaimer of our jurisdiction or our approval of these transactions. Their need is for a prompt and definitive action by the Board in order that they might consummate the transactions by the December 29th date, set for the complicated closing arrangements. The application has necessarily been brief in its statement of these problems and the short period of time between the date of filing and the date by which our action has been sought has prevented our giving to these matters the study and consideration which would be warranted to resolve satisfactorily the question of jurisdiction. In circumstances such as these when we do not find the transactions contrary to the public interest, and where the parties do not contest our jurisdiction, it is certainly better to assume jurisdiction and to act promptly so that the parties might proceed to a satisfactory resolution of the business situation.

[3955] The basic terms of the financing, including the portion involving transactions directly between Toolco and TWA, are essentially the same as those heretofore approved by Orders E-15561, dated July 21, 1960, and E-15430, dated June 23, 1960. And we find that, as modified, they are in the public interest and should be approved under the terms of Order 3210 and by exemption under section 416 of the Act from the requirements of section 408.

<sup>20</sup> See *Trans World Airlines, Inc., Further Control by Hughes Tool Company*, 12 C.A.B. 192, 196 (1950), Docket 2796. "Aside from any undesirable influence on an air carrier which might arise because of the acquirer's interest in a given phase of aeronautics, an acquirer of an air carrier is not without responsibility in other respects for an air carrier's general capacity to perform its public responsibilities. For inevitably the controlling company, by virtue of its investment in the acquired carrier, will endeavor to make itself accountable — as indeed the acquirer here under scrutiny had — for the managerial efficiency, the operating economy, and the financial integrity of the controlled carrier. Accordingly, in determining whether or not a particular acquisition should be approved, it is necessary to consider the over-all impact of the acquirer's plans and policies with respect to the controlled carrier."

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To the extent that the Voting Trustees shall be considered as officers or directors of TWA and nominees of the directors of Toolco, the interlocking relationships between TWA and Toolco should be found in the public interest and approved.

Raymond M. Holliday, Vice President, Assistant Treasurer and Assistant Secretary of Toolco, is a member of TWA's Board of Directors. By Order E-14251, July 22, 1959, the Board approved the holding by Mr. Holliday of any directorships and offices within the system of affiliated and subsidiary companies composed of Toolco and TWA. In view of the previous approval of Mr. Holliday's interlocking relationships, his serving in addition as a Voting Trustee by Toolco nomination will not adversely affect the public interest. Accordingly, approval to the extent required under section 409(a) of the Act is granted herein.

Ernest R. Breech is Chairman of the Board of Directors of Aeronutronic Systems, Inc., a Ford subsidiary which is apparently engaged in research related to space vehicles and related matters chiefly for military purposes. This is his only association which appears to be an aeronautical enterprise.<sup>11</sup> Since it is not engaged in the sale of products to civil air carriers, it is consistent with our practice to approve this relationship.

**ACCORDINGLY, IT IS ORDERED:**

1. That the restrictions imposed on transactions between Toolco and TWA by Order 3210, as modified by Order E-15561, July 21, 1960, and by Order E-15430, June 23, 1960, are further modified herein to permit TWA to consummate the transactions described in the motion filed herein;

<sup>11</sup> Mr. Breech has offered and will be asked to submit in detail the full information required by Part 251 of the Economic Regulations. Should the information reveal any additional relationships, the Board would be free to act at that time.

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- 【3956】 2. That TWA be and it hereby is, exempted pursuant to section 416, from the requirement of section 408 to the extent necessary to enable it to consummate the jet aircraft equipment purchases described and set forth in the motion herein;
3. That this order shall not be deemed a determination for rate-making purposes of the reasonableness of any of the transactions specified herein;
4. That to the extent required under section 409(a) of the Act, approval is granted of the relationships which will be created by Raymond M. Holliday, Ernest R. Breech, and Irving S. Olds, serving as Voting Trustees of the controlling stock interest of Toolco, in TWA, under a Voting Trust Agreement;
5. That this Order may be amended or revoked at any time in the discretion of the Board without hearing.

By the Civil Aeronautics Board:

/s/ ROBERT C. LESTER

Robert C. Lester  
Secretary

(smal)